

Notices of Intent

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs C Certification of Student Data
(LAC 28:IV.1903)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

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

Title 28 EDUCATION

Part IV. Student Financial Assistance C Higher Education Scholarship and Grant Programs Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions

§1903. Responsibilities of Postsecondary Institutions

A. Certification of Student Data

1. Through the summer term of 2002, upon request by LASFAC, and for the purpose of determining an applicant's eligibility for a program award, an institution will report the following student data:

- a. admission and full-time undergraduate enrollment; and
- b. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
- c. enrollment in math or chemistry as a major while pursuing teacher certification; and
- d. graduate or undergraduate enrollment in wildlife forestry or marine science; and
- e. cumulative college grade point average; and
- f. cumulative college credit hours earned;
- g. academic year hours earned.

2. Effective the fall semester of 2002, upon request by LASFAC, and for the purpose of determining an applicant's eligibility for a program award, an institution shall report the following student data:

- a. admission and full-time undergraduate enrollment; and
- b. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
- c. enrollment in math or chemistry as a major while pursuing teacher certification; and
- d. graduate or undergraduate enrollment in wildlife forestry or marine science; and
- e. semester hours attempted;
- f. semester hours earned;
- g. semester quality points earned; and
- h. resignation from the institution or withdrawal from all courses.

B. - G Y

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 LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25: 1459 (August 1999), LR 26:1998, 2002 (September 2000). LR 27:1864 (November 2001), LR 28:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 2002, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, P.O. Box 91202, Baton Rouge LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Scholarship/Grant Programs C Certification of Student Data

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

No additional costs are anticipated to result from this rule change which amends the data to be reported by institutions eligible to participate in the Tuition Opportunity Program for Students (TOPS) program.

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

No impact on revenue collections is anticipated to result from these rule changes.

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

The rule change will insure that all postsecondary students are held to the same statutory standards in having their cumulative grade point average calculated based on all courses attempted.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge
General Counsel
0204#043

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Tuition Trust Authority Office of Student Financial Assistance

Student Tuition and Revenue Trust (START Saving)
Program C Interest Rates (LAC 28:VI.315)

The Louisiana Tuition Trust Authority (LATTA) announces its intention to amend rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 17:3091-3099.2). This proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Title 28
EDUCATION**

**Part VI. Student Financial AssistanceC Higher
Education Savings**

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A. - B.4. ...

5. For the year ending December 31, 2001, the Louisiana Education Tuition and Savings Fund earned an interest rate of 6.33 percent.

6. For the year ending December 31, 2001, the Earnings Enhancements Fund earned an interest rate of 6.38 percent.

C. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1884 (November 2001), LR 28:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 2002, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Student Tuition and Revenue Trust
(START Saving) ProgramC Interest Rates**

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

There are no implementation costs or savings to state or local governmental units as a result of this change. The Rule adopts interest rates to be applied for the year ending December 31, 2001, on funds in START accounts of record and on earnings enhancements which have been allocated to those accounts.

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

No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from the revision.

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

This Rule provides the interest rates to be applied to funds in START accounts and on earnings enhancements allocated to those accounts for the year ending December 31, 2001.

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

No impact on competition and employment is anticipated to result from this Rule.

George Badge Eldredge
General Counsel
0204#044

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Corrective Action Management Units
(LAC 33:V.109, 2601, 2602, 2603,
2605, and 2607)(HW081*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.109, 2601, 2602, 2603, 2605, and 2607 (Log #HW081*).

This proposed rule is identical to federal regulations found in 67 FR 2962, January 22, 2002, No. 14, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

Corrective Action Management Units (CAMUs) are special units created under the Resource Conservation and Recovery Act (RCRA) to facilitate treatment, storage, and disposal of hazardous wastes managed for implementing cleanup, and to remove the disincentives to cleanup that the application of RCRA to these wastes can sometimes impose. The original CAMU regulations were promulgated on February 16, 1993. The state is proposing to adopt the federal amendments verbatim.

The previous LAC 33:V.2603.Temporary Units (TU) is moved to §2604. Text remains the same. In this proposed rule §2603 is now titled "Corrective Action Management Units (CAMUs)." This proposed rule amends the 1993 CAMU rule in six ways. It establishes a specific definition, distinct from the definition of remediation waste, to govern the types of wastes that are eligible for placement in CAMUs. More detailed minimum design and operating standards are established for CAMUs in which waste will remain after closure, with opportunities for the administrative authority of an authorized state to approve alternate design standards under certain circumstances. Treatment requirements are established for wastes that are placed in CAMUs, including minimum treatment standards, with opportunities to adjust treatment requirements under certain circumstances. More specific information is required for CAMU applications, and there shall be public notice and a reasonable opportunity for public comment before final CAMU determinations are made. New requirements are established for CAMUs that will be used only for treatment and storage. Certain types of existing CAMUs will be "grandfathered" and allowed to continue to operate under the 1993 rule. The proposed rule also amends the regulations for "staging piles" to expressly allow for mixing, blending, and

other similar physical operations intended to prepare wastes for subsequent management or treatment. It also adds a new provision allowing off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if the waste is treated to meet CAMU treatment standards (somewhat modified). The basis and rationale for this rule are to mirror the federal regulations and to maintain state and federal equivalency in the RCRA program.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise:

* * *

Corrective Action Management Unit (CAMU) Repealed.

* * *

Remediation Waste Call solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.

* * *

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 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:

Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup

§2601. Applicability of Corrective Action Management Unit (CAMU) Regulations

A. Except as provided in Subsection B of this Section, CAMUs are subject to the requirements of LAC 33:V.2604.

B. CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the department on or before November 20, 2000, are subject to the requirements in LAC 33:V.2602 for grandfathered CAMUs. CAMU waste, activities, and design shall not be subject to the standards in LAC 33:V.2604, so long as the waste, activities, and design remain within the general scope of the CAMU as approved.

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 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:285 (February 2000), LR 28:

§2602. Grandfathered Corrective Action Management Units (CAMUs)

A. To implement remedies under LAC 33:V.3322 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to LAC 33:V.3322, the administrative authority may designate an area at the facility as a CAMU under the requirements in this Section. CAMU means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1. Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

2. Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

B. The administrative authority may designate a regulated unit (as defined in LAC 33:V.3301.B) as a CAMU, or may incorporate a regulated unit into a CAMU, under the following conditions.

1. The regulated unit is closed or closing, meaning it has begun the closure process under LAC 33:V.3513 or 4383.

2. Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.

3. The LAC 33:V.Chapters 33, 35, and 37 requirements and the unit-specific requirements of Chapters 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 43 that applied to that regulated unit shall continue to apply to that portion of the CAMU after incorporation into the CAMU.

C The administrative authority shall designate a CAMU in accordance with the following.

1. The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies.

2. Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents.

3. The CAMU shall include uncontaminated areas of the facility only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility.

4. Areas within the CAMU where wastes remain in place after closure of the CAMU shall be managed and contained so as to minimize future releases, to the extent practicable.

5. The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable.

6. The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU.

7. The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

D. The owner/operator shall provide sufficient information to enable the administrative authority to designate a CAMU in accordance with the criteria in LAC 33:V.2603.

E. The administrative authority shall specify, in the permit or order, requirements for CAMUs, which include the following.

1. The areal configuration of the CAMU shall be provided.

2. Requirements for remediation waste management shall include the specification of applicable design, operation, and closure requirements.

3. Requirements for groundwater monitoring shall be sufficient to:

a. continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in groundwater from sources located within the CAMU; and

b. detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU.

4. Closure and post-closure requirements shall include the following:

a. closure of CAMUs, which shall:

i. minimize the need for further maintenance; and
ii. control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere;

b. requirements for closure of CAMUs that shall include the following, as appropriate and as deemed necessary by the administrative authority, for a given CAMU:

i. requirements for excavation, removal, treatment, or containment of wastes;

ii. for areas in which wastes will remain after closure of the CAMU, requirements for capping of such areas; and

iii. requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the CAMU;

c. in establishing specific closure requirements for CAMUs under LAC 33:V.2603.E, the administrative authority shall consider the following factors:

i. CAMU characteristics;

ii. volume of wastes that remain in place after closure;

iii. potential for releases from the CAMU;

iv. physical and chemical characteristics of the waste;

v. hydrological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

vi. potential for exposure of humans and environmental receptors if releases were to occur from the CAMU; and

d. post-closure requirements, as necessary to protect human health and the environment, including for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed, to ensure the integrity of any cap, final cover, or other containment system.

F. The administrative authority shall document the rationale for designating CAMUs and shall make such documentation available to the public.

G. Incorporation of a CAMU into an existing permit must be approved by the administrative authority according to the procedures for department-initiated permit modifications under LAC 33:V.323 or according to the permit modification procedures of LAC 33:V.321.C.

H. The designation of a CAMU does not change EPA's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

Editor's Note: The previous §2603.Temporary Units (TU) has been changed to §2604. The text remains the same.

§2603. Corrective Action Management Units (CAMUs)

A. To implement remedies under LAC 33:V.3322 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to LAC 33:V.3322, the administrative authority may designate an area at the facility as a CAMU under the requirements in this Section. CAMU means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of

the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1. Definition. *CAMU-Eligible Waste*—

a. all solid and hazardous wastes and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes;

b. wastes that would otherwise meet the description in Subparagraph A.1.a of this Section are not CAMU-eligible wastes when:

i. the wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers, or non-land-based units as part of cleanup or the containers or tanks are excavated during the course of cleanup; or

ii. the administrative authority exercises the discretion in Paragraph A.2 of this Section to prohibit the wastes from management in a CAMU; and

c. notwithstanding Subparagraph A.1.a of this Section, when appropriate, as-generated nonhazardous waste may be placed in a CAMU when such waste is being used to facilitate treatment or the performance of the CAMU.

2. The administrative authority may prohibit, where appropriate, the placement of waste in a CAMU when the administrative authority has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of LAC 33.V.Chapter 22, applicable unit design requirements of Chapters 5, 18, 19, 21, 23, 24, 25, 27, 28, 29, 32, and 35, or applicable unit design requirements of Chapter 43 or that noncompliance with other applicable requirements of this Chapter likely contributed to the release of the waste.

3. Prohibition Against Placing Liquids in CAMUs

a. The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except when placement of such wastes facilitates the remedy selected for the waste.

b. The requirements in LAC 33:V.2515.C for placement of containers holding free liquids in landfills apply to placement in a CAMU except when placement facilitates the remedy selected for the waste.

c. The placement of any liquid that is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made in accordance with LAC 33:V.2515.F.

d. The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with LAC 33:V.2515.D. Sorbents used to treat free liquids in CAMUs must meet the requirements of LAC 33:V.2515.F.

4. Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

5. Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

B. The administrative authority may designate a regulated unit (as defined in LAC 33:V.3301.B) as a CAMU or may incorporate a regulated unit into a CAMU under the following conditions.

1. The regulated unit is closed or closing, meaning it has begun the closure process under LAC 33:V.3513 or 4383.

2. Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.

3. The LAC 33:V.Chapters 33, 35, and 37 requirements and the unit-specific requirements of Chapters 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 43 that applied to the regulated unit shall continue to apply to that portion of the CAMU after incorporation into the CAMU.

C. The administrative authority shall designate a CAMU that will be used for storage and/or treatment only in accordance with Subsection F of this Section. The administrative authority shall designate all other CAMUs in accordance with the following.

1. The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies.

2. Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents.

3. The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility.

4. Areas within the CAMU where wastes remain in place after closure of the CAMU shall be managed and contained so as to minimize future releases, to the extent practicable.

5. The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable.

6. The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU.

7. The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

D. The owner/operator shall provide sufficient information to enable the administrative authority to designate a CAMU in accordance with the criteria in this Section. This must include, unless not reasonably available, information on:

1. the origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

2. whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

3. whether the disposal and/or release of the waste occurred before or after the land disposal requirements of LAC 33:V.Chapter 22 were in effect for the waste listing or characteristic.

E. The administrative authority shall specify, in the permit or order, requirements for CAMUs, which include the following.

1. The areal configuration of the CAMU shall be provided.

2. Except as provided in Subsection G of this Section, requirements for CAMU-eligible waste management shall include the specification of applicable design, operation, treatment, and closure requirements.

3. Minimum Design Requirements. CAMUs, except as provided in Subsection F of this Section, into which wastes are placed must be designed in accordance with the following.

a. Unless the administrative authority approves alternate requirements under Subparagraph E.3.b of this Section, CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30 cm depth of leachate over the liner. For purposes of this Section, *composite liner* means a system consisting of two components: the upper component must consist of a minimum 30 mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

b. Alternate Requirements. The administrative authority may approve alternate requirements if:

i. the administrative authority finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at least as effectively as the liner and leachate collection systems in Subparagraph E.3.a of this Section; or

ii. the CAMU is to be established in an area with existing significant levels of contamination, and the administrative authority finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

4. Minimum Treatment Requirements. Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with Subsection F of this Section, CAMU-eligible wastes that, absent this Section, would be subject to the treatment requirements of LAC 33:V.Chapter 22 and that the administrative authority determines contain principal hazardous constituents must be treated to the standards specified in Subparagraph E.4.c of this Section.

a. Principal hazardous constituents are those constituents that the administrative authority determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

i. In general, the administrative authority will designate as principal hazardous constituents:

(a). carcinogens that pose a potential direct risk from ingestion or inhalation, at the site, at or above 10^{-3} risk level; and

(b). non-carcinogens that pose a potential direct risk from ingestion or inhalation, at the site, an order of magnitude or greater over their reference dose.

ii. The administrative authority will also designate constituents as principal hazardous constituents, when appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to groundwater are substantially higher than cleanup levels or goals at the site. When making such a designation, the administrative authority may consider such factors as constituent concentrations and fate and transport characteristics under site conditions.

b. In determining which constituents are principal hazardous constituents, the administrative authority must consider all constituents that, absent this Section, would be subject to the treatment requirements in LAC 33:V.Chapter 22.

c. Waste that the administrative authority determines contains principal hazardous constituents must meet treatment standards determined in accordance with Subparagraph E.4.d or e of this Section.

d. Treatment Standards for Wastes Placed in CAMUs

i. For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by Clause E.4.d.iii of this Section.

ii. For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by Clause E.4.d.iii of this Section.

iii. When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in LAC 33:V.Chapter 22, Table 7.

iv. For waste exhibiting the hazardous characteristic of ignitability, corrosivity, or reactivity, the waste must also be treated to eliminate these characteristics.

v. For debris, the debris must be treated in accordance with LAC 33:V.2230 or by methods described in or to levels established under Clauses E.4.d.i-iv or Subparagraph E.4.e of this Section, whichever the administrative authority determines is appropriate.

vi. Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the administrative authority may specify a leaching test other than the TCLP (Method 1311, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.A.11) to measure treatment effectiveness, provided the administrative authority determines that an alternative leach testing protocol is appropriate for use and that the alternative more accurately reflects conditions at the site that affect leaching.

e. Adjusted Standards. The administrative authority may adjust the treatment level or method in Subparagraph E.4.d of this Section to a higher or lower level, based on one or more of the following factors, as appropriate. The

adjusted level or method must be protective of human health and the environment:

i. the technical impracticability of treatment to the levels or by the methods in Subparagraph E.4.d of this Section;

ii. the levels or methods in Subparagraph E.4.d of this Section would result in concentrations of principal hazardous constituents that are significantly above or below cleanup standards applicable to the site (established either site-specifically or promulgated under state or federal law);

iii. the views of the affected local community on the treatment levels or methods in Subparagraph E.4.d of this Section, as applied at the site, and for treatment levels, the treatment methods necessary to achieve these levels;

iv. the short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in Subparagraph E.4.d of this Section; and

v. the long-term protection offered by the engineering design of the CAMU and related engineering controls:

(a). when the treatment standards in Subparagraph E.4.d of this Section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility;

(b). when cost-effective treatment has been used and the CAMU meets the RCRA Subtitle C liner and leachate collection requirements for new land disposal units at LAC 33:V.2503.L and M;

(c). when, after review of appropriate treatment technologies, the administrative authority determines that cost-effective treatment is not reasonably available, and the CAMU meets the RCRA Subtitle C liner and leachate collection requirements for new land disposal units at LAC 33:V.2503.L and M;

(d). when cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(e). when, after review of appropriate treatment technologies, the administrative authority determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in Subparagraphs E.3.a and b of this Section or the CAMU provides substantially equivalent or greater protection.

f. The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

g. For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the administrative authority may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

5. Except as provided in Subsection F of this Section, CAMUs shall have requirements for groundwater monitoring and corrective action that are sufficient to:

a. continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in groundwater from sources located within the CAMU;

b. detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

c. provide notification to the administrative authority and corrective action as necessary to protect human health and the environment from releases to groundwater from the CAMU.

6. Except as provided in Subsection F of this Section, CAMUs shall have the following closure and post-closure requirements:

a. closure of CAMUs, which shall:

i. minimize the need for further maintenance; and

ii. control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere;

b. requirements for closure of CAMUs that shall include the following, as appropriate and as deemed necessary by the administrative authority, for a given CAMU:

i. requirements for excavation, removal, treatment, or containment of wastes; and

ii. requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU;

c. in establishing specific closure requirements for CAMUs under this Subsection, the administrative authority shall consider the following factors:

i. CAMU characteristics;

ii. volume of wastes that remain in place after closure;

iii. potential for releases from the CAMU;

iv. physical and chemical characteristics of the waste;

v. hydrological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

vi. potential for exposure of humans and environmental receptors if releases were to occur from the CAMU;

d. cap requirements, as follows:

i. at final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in Clause E.6.d.ii of this Section:

(a). provide long-term minimization of migration of liquids through the closed unit;

(b). function with minimum maintenance;

(c). promote drainage and minimize erosion or abrasion of the cover;

(d). accommodate settling and subsidence so that the cover's integrity is maintained; and

(e). have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present; and

ii. the administrative authority may determine that modifications to Clause E.6.d.i of this Section are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation); and

e. post-closure requirements as necessary to protect human health and the environment and to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed, to ensure the integrity of any cap, final cover, or other containment system.

F. CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements of this Section, except as follows.

1. CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at LAC 33:V.2605.D.1.c, H, and I are subject to the requirements for staging piles at LAC 33:V.2605.D.1.a and b and 2, E, F, J, and K in lieu of the performance standards and requirements for CAMUs in Subsection C and Paragraphs E.3 - 6 of this Section.

2. CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at LAC 33:V.2605.D.1.c, H, and I:

a. must operate in accordance with a time limit, established by the administrative authority, that is no longer than necessary to achieve a timely remedy selected for the waste; and

b. are subject to the requirements for staging piles at LAC 33:V.2605.D.1.a and b and 2, E, F, J, and K in lieu of the performance standards and requirements for CAMUs in Subsection C and Paragraphs E.4 and 6 of this Section.

G. CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at Subparagraph E.3.a of this Section, requirements for caps at Subparagraph E.6.d of this Section, groundwater monitoring requirements at Paragraph E.5 of this Section or, for treatment and/or storage-only CAMUs, the design standards at Subsection F of this Section.

H. The administrative authority shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under Subparagraph E.4.e of this Section to the treatment standards in Subparagraph E.4.d of this Section.

I. Notwithstanding any other provision of this Section, the administrative authority may impose additional requirements as necessary to protect human health and the environment.

J. Incorporation of a CAMU into an existing permit must be approved by the administrative authority according to the procedures for department-initiated permit modifications under LAC 33:V.323 or according to the permit modification procedures of LAC 33:V.321.C.

K. The designation of a CAMU does not change EPA's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

§2605. Staging Piles

NOTE: This Section is written in a special format to make it easier to understand the regulatory requirements. Like other department and USEPA regulations, this establishes enforceable legal requirements. For this Section, *I* and *you* refer to the owner/operator.

A. What Is a Staging Pile? A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in LAC 33:V.109) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the administrative authority according to the requirements in this Section. For the purposes of this Section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

B. - M. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:285 (February 2000), amended LR 28:

§2607. Disposal of CAMU-Eligible Wastes in Permitted Hazardous Waste Landfills

A. The administrative authority with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of LAC 33:V.Chapter 22, if the conditions in Paragraphs A.1-3 of this Section are met.

1. The waste must meet the definition of CAMU-eligible waste in LAC 33:V.2603.A.1.

2. The administrative authority with regulatory oversight at the location where the cleanup is taking place shall identify principal hazardous constituents in such waste, in accordance with LAC 33:V.2603.E.4.a and b, and require that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

a. the treatment standards under LAC 33:V.2603.E.4.d;

b. treatment standards adjusted in accordance with LAC 33:V.2603.E.4.e.i, iii, iv, or v.(a); or

c. treatment standards adjusted in accordance with LAC 33:V.2603.E.4.e.v.(b) when treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

3. The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in LAC 33:V.Chapter 25, and be authorized to accept CAMU-eligible wastes. For the purposes of this requirement, "permit" does not include interim status.

B. The person seeking approval shall provide sufficient information to enable the administrative authority with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with Subsection A of this Section. Information required by LAC 33:V.2603.D.1-3 for CAMU applications must be provided, unless it is not reasonably available.

C. The administrative authority with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving CAMU-eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at LAC 33:V.2603.H. The approval must be specific to a single remediation.

D. Applicable hazardous waste management requirements in LAC 33:V. Chapters 5, 18, 19, 21, 23, 24, 25, 27, 28, 29, 32, and 35, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this Section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding LAC 33:V.307.A, a landfill may not receive hazardous CAMU-eligible waste under this Section unless its permit specifically authorizes receipt of such waste.

E. For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with Subsection D of this Section until the following additional conditions have been met.

1. The landfill owner/operator shall notify the administrative authority responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with LAC 33:V.717.A.5, of his or her intent to receive CAMU-eligible waste in accordance with this Section. The notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

2. Any comments from persons on the facility mailing list, including objections to the receipt of the CAMU-eligible waste, shall be provided to the administrative authority within 15 days of notification.

3. The administrative authority shall have the opportunity to object to the placement of the CAMU-eligible waste in the landfill for a period of 30 days after notification. The administrative authority may extend the review period an additional 30 days because of public concerns or insufficient information.

4. CAMU-eligible wastes shall not be placed in the landfill until the administrative authority has notified the facility owner/operator that he or she does not object to its placement.

5. If the administrative authority objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility shall not receive the waste, notwithstanding LAC 33:V.307.A, until the objection has been resolved or the owner/operator obtains a permit modification in accordance with the procedures of LAC 33:V.321.C specifically authorizing receipt of the waste.

6. As part of the permit issuance or permit modification process of Paragraph D of this Section, the administrative authority may modify, reduce, or eliminate the notification requirements of this Subsection as they apply to specific categories of CAMU-eligible waste, based on minimal risk.

F. Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this Section must comply with the requirements of LAC 33:V.2245.D. Off-site facilities treating CAMU-eligible wastes to comply with this Section must comply with the requirements of LAC 33:V.2247.C, except that the certification must be with respect to the treatment requirements of Paragraph A.2 of this Section.

G For the purposes of this Section only, the "design of the CAMU" in LAC 33:V.2603.E.4.e.v means design of the permitted RCRA Subtitle C landfill.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

A public hearing will be held on May 28, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by HW081.* Such comments must be received no later than May 28, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to patsyd@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW081.*

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-First Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA

71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0204#033

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Stage II Vapor Recovery Systems (LAC 33:III.2132)(AQ225)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.2132 (Log #AQ225).

This proposed Rule allows the continued use of the current Stage II vapor recovery systems certified under California Air Resources Board (CARB) certification procedures effective on or before March 31, 2001. Stage II vapor recovery system requirements are applicable to motor vehicle fuel dispensing facilities in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. Louisiana and other states based their vapor recovery programs on the requirements of CARB. CARB recently approved changes to its standards, which affect the installation and operation of CARB-certified systems in Louisiana and other states. The EPA has recommended that a state not changing its standard to meet CARB's revised standards reference in its regulations that certification is based on CARB certification procedures effective on or before March 31, 2001. This proposed revision complies with that recommendation. This Rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP) for air quality. The basis and rationale for this Rule are continued compliance with the Clean Air Act requirements for the Baton Rouge area for protection of air quality.

This proposed Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33 ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter F. Gasoline Handling

§2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities

A. Definitions. Terms used in this Section are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined as follows:

* * *

Stage II Vapor Recovery System—A gasoline vapor recovery system that is CARB-approved on or before March 31, 2001, or equivalent, and recovers vapors during the refueling of motor vehicles.

B. - B.4.d. ...

5. No owner or operator as described in Paragraphs B.1, 2, and 3 of this Section shall cause or allow the dispensing of motor vehicle fuel at any time unless all fuel dispensing operations are equipped with and utilize a Stage II vapor recovery system certified by CARB on or before March 31, 2001, that is properly installed and operated in accordance with the corresponding CARB executive order. The vapor recovery equipment must also be installed and operated within the guidelines of the National Fire Protection Association (NFPA) 30. The vapor recovery equipment utilized shall be certified by CARB or equivalent certification authority approved by the administrative authority* to attain a minimum of 95 percent gasoline vapor control efficiency. This certified equipment shall have coaxial hoses and shall not contain remote check valves. In addition, only CARB or equivalent approved aftermarket parts and CARB or equivalent approved rebuilt parts shall be used for installation or replacement use.

B.6. - D.1.b.iii. ...

2. The test methods used are contained in the Environmental Protection—Agency document entitled, "Technical Guidance Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, EPA-450-3-91-022b" and the CARB Stationary Source Test Methods, Volume 2, April 12, 1996.

D.3. - H.1. ...

- a. notices of corrected violations;
- b. compliance orders;

H.1.c. - I. ...

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 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:1682 (December 1997), LR 24:25 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:

A public hearing on the proposed rule and SIP revision will be held on May 28, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by AQ225. Such comments must be received no later than June 4, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to patsyd@deq.state.la.us. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ225.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-First Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Stage II Vapor Recovery Systems

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

There are no known implementation costs or savings to state or local governmental units.

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

There is no estimated effect on revenue collections of state or local governmental units.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment. This rule serves only to clarify the requirements and applicability of LAC 33:III.Chapter 21, Subchapter F, Section 2132.

James H. Brent, Ph.D.
Assistant Secretary
0204#032

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Information Technology

Information Technology
(LAC 4:XI.101, 301, 303, 501 and 503)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to comply with the legislative mandate of Act 772 of the 2001 Regular Session of the Louisiana Legislature, the Office of the Governor, Division of Administration, Office of Information Technology (OIT), hereby gives notice of its intent to promulgate Rules and Regulations relative to information technology initiatives.

Title 4

ADMINISTRATION

Part XI. Information Technology

Chapter 1. General Provisions

§101. General

A. Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 39:15.1-6 in Act 772 of the 2001 Regular Session, the Chief Information Officer (CIO) and the Office of Information Technology (OIT) was established to manage and direct the following information technology initiatives:

1. overseeing and implementing a state master information technology plan;

2. establishing/directing the implementation of IT standards, architecture, and guidelines for hardware and software systems, contractual arrangements, consolidation of services, and system management;

3. reviewing, coordinating, and standardizing IT planning, procurement, and budgeting;

4. implementing strategic IT planning, review, and operation;

5. measuring and assessing the performance of IT systems, including the creation of benchmarks and the establishment of accountability;

6. overseeing/coordinating the centralization of technology, including consolidation, outsourcing, and sharing statewide government IT resources and services;

7. assuring compatibility and connectivity of Louisiana's information systems;

8. facilitating and fostering innovative emerging technologies that provide cost-effective solutions for government operation;

9. reviewing/overseeing IT projects and systems for compliance with statewide strategies, goals, and standards;

10. ensuring that statewide IT applications are not duplicated by individual state agencies in the executive branch;

11. facilitating/fostering the identification of state data policy and planning needs; and

12. charging respective user agencies for the cost of IT services provided by OIT.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

Chapter 3. State Agencies Responsibilities

§301. General

A. All agencies under the authority of Act 772 must comply with the policies and guidelines promulgated by the Office of Information Technology.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

§303. Information Technology Coordination

A. All departments shall designate one representative to serve as the Information Technology Coordinator, unless otherwise approved by the CIO. The Information Technology Coordinator shall be recognized by the Office of Information Technology as the agency's authorized representative for coordinating with OIT.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

Chapter 5. Policy and Guidelines

§501. General

A. It is the intent of the Office of Information Technology to develop formal IT policies, standards and guidelines relative to information technology activities including but not limited to the following:

1. implementing of IT standards for hardware, software, and consolidation of services;
2. reviewing and coordinating IT planning, procurement, and budgeting;
3. providing oversight for centralization/consolidation of technology initiatives and the sharing of IT resources;
4. assuring compatibility and connectivity of Louisiana's information systems;
5. providing oversight on IT projects and systems for compliance with statewide strategies, goals, and standards.

B. The policies, standards and guidelines of the Office of Information Technology will be promulgated via Information Technology Bulletins.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

§503. Policy Distribution

A. The official method of publishing/distributing OIT policies, standards and guidelines will be via the OIT website at: www.doa.state.la.us/oit.

B. Other electronic delivery systems will be utilized as appropriate to notify agencies of adopted policies and guidelines.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

Family Impact Statement

In accordance with Act 1183 of 1999, the Office of the Governor, Division of Administration, Office of Information Technology hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice

of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

The proposed rule for the OIT should not have any known or foreseeable impact on any family as defined by R.S. 49:9720 or on family information, stability, and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested persons may submit comments relative to the proposed Rule to James Howze, Office of Information Technology, P.O. Box 94095, Baton Rouge, LA 70805-9095, prior to May 20, 2002.

Chad McGee
Acting Chief Information Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Information Technology**

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

There are no estimated implementation costs to state or local governmental units beyond the initial publication cost which we anticipate to be \$100. There should be no implementation cost in later years. In regards to cost savings, it is the long range goal of the Office of Information Technology to capitalize on economies of scale and provide shared hardware, networking, technical, operational, and facility support from an enterprise level. The centralization and consolidation of these services will create numerous opportunities for eliminating duplication of services, and reducing overall IT cost for the enterprise.

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

Implementation of the proposed Rule should have no effect on revenue collections of state or local governmental units.

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

There are no significant anticipated costs and/or economic benefits to directly affected persons or non-governmental groups. However, to the extent that IT savings can be accomplished by state government, it is presumed that some decrease in private sector revenues may occur. At this time, any such revenue decrease which might occur cannot be quantified, and no particular private entity can be identified as being subject to any loss of revenue.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no significant effect on competition and employment. Furthermore, OIT will comply with all applicable procurement rules/regulations.

Chad McGee
Acting CIO
0204#050

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT
Office of the Governor
Ground Water Management Commission

Ground Water Management (LAC 33:IX.Chapters 31-35)

Editor's Note: In accordance with OSR uniform formatting procedure, these rules have been moved from Title 70 to Title 33 for topical placement.

Pursuant to the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., as amended, on May 18, 2001, the Ground Water Management Commission (Commission) approved the subject rule for hearing regarding the designation of Critical Ground Water Areas on March 20, 2002 in accordance with R.S. 38:3099. R.S. 38:3099 states that the commission shall develop and promulgate rules and regulations for the determination of critical ground water areas and possible limitation of access to ground water sources and response to emergency situations. Failure to designate and protect critical ground areas may endanger drinking water, as well as the ability of industry and agriculture to utilize these fresh water aquifers for commercial purposes. R.S. 38:3099 specifically requires that public hearings be held in such matters and the attached rule provide the mechanism to meet that requirement. This proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality

Subpart 2. Groundwater Management

Chapter 31. General Provisions

§3101. Applicability

A. These Rules shall be applicable to hearings relative to the commission's jurisdiction to determine critical groundwater areas, potential critical ground water areas and a ground water emergency. The Rules shall not alter or change the right of the commission to call a hearing for the purpose of taking action with respect to any matter within its jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3103. Definitions

A. The words defined herein shall have the following meanings when used in these Rules. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

Beneficial Purpose or Beneficial Use the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational or therapeutic purposes or any other advantageous use.

Commission Ground Water Management Commission authorized by R.S. 38:3099.3.A.

Critical Ground Water Area (CGWA) Can area where sustainability of an aquifer is not being maintained under current or projected usage or under normal environmental conditions which are causing a serious adverse impact to an aquifer.

Ground Water water suitable for any beneficial purpose percolating below the earth's surface, including water suitable for domestic use, supply of a public water system or containing fewer than 10,000 mg/l total dissolved solids.

Ground Water Emergency shall mean an unanticipated occurrence as a result of a natural force or a man-made act which causes either the depletion of a ground water source or a lack of access to a ground water source or the likelihood of excessive pumping from a ground water source.

Person any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

Potential Critical Ground Water Area a ground water area where drilling of new well(s) or pumpage at current rates could result in creation of a CGWA.

Sustainability the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

User any person making any beneficial use of ground water from a well or wells owned or operated by such person or from a well or wells owned or operated solely for the production of water used by such person.

Well or Water Well any well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

Chapter 33. Application Procedure

§3301. Who May Apply

A. Any person owning property, a water well or utilizing water from an aquifer within the jurisdiction of the commission shall have the right to file an application with the commission calling for a public hearing relative to said aquifer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3303. Notice of Intent

A. A Notice of Intent to file an application will be published in the official parish journals. Such notice will include:

1. name, address, and telephone number;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish, section, township, range, and a map which shall be sufficiently clear to readily identify the location of the proposed CGWA;
4. a statement that, if the area is designated a CGWA, ground water use may be restricted;
5. a statement that all comments should be sent to:

Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275

ATTN: Groundwater Management Commission Staff
AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3305. Application

A. Application for Hearing. The application shall be filed in duplicate no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. The application must include:

1. the name, address, telephone number, and signature of applicant;
2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;
3. identification of the source of ground water (aquifer) to which the application applies;
4. identification of the proposed critical ground water area, including its location (section, township, range and parish) and U.S. Geological Survey topographic map of appropriate scale (1:24,000, 1:62,500, 1:100,000, or LA - DOTD Louisiana parish map outlining the perimeter of the area). Submittal of digital data is recommended. Digital map data in vector and/or raster formats should have supporting metadata;
5. statement of facts and evidence supporting the application, pursuant to §3307, and a statement on how no action would likely impact ground water resources in the area subject to request;
6. the original published page from the official parish journal evidencing publication of Notice of Intent to apply to the Ground Water Management Commission.

B. Application by Commission. The commission may initiate a hearing to consider action with respect to a specific ground water area. The commission shall notify the public pursuant to §3303 and §3501.A prior to issuing an order. The information presented by the commission at the hearing shall include but not be limited to information pursuant to §3305.A and §3307.

C. Ground Water Emergency. Notwithstanding the provisions of Paragraphs A and B hereof, the commission may initiate action in response to an application of an interested party or upon its own motion in response to a ground water emergency. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commission will promptly schedule a public hearing pursuant to §3501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3307. Criteria for a Critical Ground Water Designation

A. Application for designation of a critical ground water area or potential critical ground water area must contain a statement of facts and supporting evidence substantiating that at least one of the following criteria applies to the source of ground water (aquifer) within such proposed area:

1. water levels in the source of ground water show declines that will render such source inadequate for current or immediate future demands without some action being taken; and/or
2. concentrations of chlorides, total dissolved solids (TDS) or other impurities that will render the source of

ground water unsuitable for domestic use have shown annual increases that will render such source unsuitable for current or immediate future demands without some action being taken; and/or

3. overall withdrawals annually have exceeded the recharge of the source of ground water that will render the source inadequate for current or immediate future demands without some action being taken.

B. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the designation of the critical ground water area boundaries; and
2. the recommended management controls of the critical ground water area, that may include but not be limited to:
 - a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;
 - b. requiring new permits for the drilling of new water wells including but not limited to:
 - i. spacing restrictions; and/or
 - ii. depth restrictions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3309. Commission Review

A. Within 30 days of receipt of an application pursuant to §3305.A, the applicant will be notified whether or not the application is complete. If the commission determines an application is incomplete, the applicant shall be notified in writing of the reasons for that determination and the information needed to make such application complete. The commission may reject and return any application determined to be without merit or frivolous.

B. Using all available data presented to the commission, an analysis will be made by the commission to determine if the area under consideration meets the criteria to be designated a critical ground water area or could become a critical ground water area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3311. Recordkeeping

A. The commission shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commission. The commission shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

Chapter 35. Hearing

§3501. Notice Of Hearing

A. Hearing Pursuant to §3305.A or §3305.B. Upon determination that an application is complete the commission shall schedule one initial public hearing at a location determined by the commission in the locality of the area affected by the application. Notice of the hearing shall contain the date, time and location of the hearing and the

location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing. A copy of the notice shall be sent to the applicant, any person requesting notice, and local, state and federal agencies that the commission determines may have an interest in the decision relating to the application.

B. Hearing Pursuant to §3305.C and §3505.B. The commission will notify the public of any hearing initiated by the commission either as a result of an action, pursuant to §3305.C or §3505.B, a minimum of 15 days prior to the hearing. Hearings initiated by the commission will be held in each parish affected by the commission's action under §3305.C or §3505.B. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the commission's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3503. Rules of Conduct

A. Hearings scheduled pursuant to those rules will be fact-finding in nature and witnesses shall not be subject to cross-examination. The chairman of the commission, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements. The applicant shall first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives. All hearings shall be recorded verbatim. Copies of the transcript shall be available for public inspection at the Office of Conservation. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

§3505. Decision

A Commission Decisions. After hearings held pursuant to §3501.A or §3305.C, the commission shall issue a written decision in the form of an order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and/or

2. the recommended management controls of the critical ground water area, that may include but not be limited to:

a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;

b. requiring new permits for the drilling of new water wells including but not limited to:

- i. spacing restrictions; and/or
- ii. depth restrictions.

B. The commission will make the order and proposed management controls available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commission in accordance with §3501.B will initiate hearings on the order and proposed management controls in each parish affected by said order and management controls.

C. Final Orders. The commission will adopt final orders and management controls after completion of §3501.B. The final orders shall be made a part of the permanent records of the commission in accordance with §3311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

A public hearing will be held May 29, 2002, at 1:30 p.m. in the LaSalle Building, in the Conservation and Mineral Resources Hearing Room, 617 North Third Street, Baton Rouge, LA 70802-5428. Interested persons are invited to attend and submit oral comments on the proposed Rule.

Interested persons may submit written comments on the proposed rule until 4:30 p.m., June 7, 2002, to Anthony J. Duplechin, Chief of Staff, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275 or to fax (225) 342-5529. Interested persons may also contact the Chief of Staff at (225) 342-8244.

Karen K Gautreaux
Chairperson

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Ground Water Management

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

Costs for implementation to the state will be for hearings held under the rule. Each hearing must be recorded and transcribed. Staff travel will be reimbursed using current state travel rates. The anticipated cost of each hearing will be \$750. It is unknown how many hearings will be held

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

As there are no fees associated with the application and hearings process, there shall be no effect on the revenue collections of the state or local governments.

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

The rule itself will have no costs and/or economic benefit. However, actions taken by the commission may result in costs and/or economic benefits, and will be determined on a case-by-case basis. Economic benefits would include the proper management of the state's groundwater resources to maintain a sufficient supply to the public for continued economic growth.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule itself will have no effect on competition and employment. However, actions taken by the commission may result in competition and employment, and will be determined on a case-by-case basis. At this time, it is impossible to tell whether there will be any effects on competition and employment.

Felix J. Boudreaux
Commissioner
0204#028

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Used Motor Vehicle and Parts Commission**

Rent with Option-to-Purchase Program, Identification Cards, Register of Records and Extended Warranties (LAC 46:V.3001, 3003, 3503, 3901, 4101, and 4103)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4.A and 4.B, the Office of the Governor, Used Motor Vehicle and Parts Commission, notice is hereby given that the Used Motor Vehicle and Parts Commission proposes to adopt rules and regulations governing rent with option-to-purchase programs on used motor vehicles and proposes to amend sections of existing rules and regulations regarding identification cards, buyer's identification cards, motor vehicle trade shows, and business transactions. The Used Motor Vehicle and Parts Commission intends to repeal sections regarding vehicle service contracts.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part V. Automotive Industry

**Subpart 2. Used Motor Vehicle and Parts Commission
Chapter 30. Rent With Option-to-Purchase Program**

§3001. Definitions

Consummation Cthe time a renter becomes contractually obligated on a vehicle rental purchase agreement.

Processing Fee Cthose administrative fees that a rental dealer may charge to rental consumer to initiate a rental purchase agreement, however designated.

Rental Consumer Ca natural person who rents with an option-to-purchase a used motor vehicle under a vehicle rent with option-to-purchase agreement.

Rental Dealer Ca person who regularly provides used motor vehicle under a vehicle rent with option-to-purchase agreement.

Rental Purchase Agreement Ca vehicle rent with option-to-purchase agreement for the rent of a used motor vehicle by a rental dealer in favor of a rental consumer, for personal, family or household purposes for a period of not less than twelve months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773.B.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

§3003. Provisions Required in all Rental Purchase Agreements

A. All such contracts shall be made in clear and conspicuous language.

B. All such contracts be in writing, a copy of which shall be delivered to the rental consumer.

C. Condition Report. A condition report which sets forth in detail the physical condition and appearance of the vehicle prior to rental shall be completed and signed by both the rental dealer and the rental consumer.

D. Every rental purchase agreement shall contain language substantially equivalent to the following:

1. a provision indicating the description of the vehicle rented, particularly to the year, make, model, vehicle identification number, color and odometer reading;

2. a provision itemizing all costs relative to detail, delivery and/or destination of the vehicle, which shall not exceed the sum of \$150;

3. an itemization of the processing fee charged by the rental dealer, if any, which shall not exceed the sum of \$150;

4. security deposit. A provision indicating the amount of the security deposit required by the rental dealer and the conditions under which the said security deposit shall be refundable or non-refundable; however, no security deposit shall exceed the value of the vehicle as reflected by any used motor vehicle national reference guide;

5. mechanical repairs. A provision that the rental dealer cannot add repair costs to the rental purchase agreement. Further, that the rental dealer shall warrant the powertrain of the motor vehicle for any defects which existed at the time of sale for a period of 30 days or 1,000 miles, whichever is the lesser;

6. a provision offering to the rental consumer the right to secure a warranty, if one is available, for the used motor vehicle and the price of such warranty, and the cost of any deductible under the warranty;

7. a provision setting for the total amount of payments due, the number of total periodic payments and the amount of each such periodic payment;

8. a provision indicating whether the title transfer and licensing fees are included in the payments charged at consummation by the rental dealer or is to be considered additional charges;

9. a provision indicating whether a late payment is due from the rental consumer after a certain date selected for periodic payment, the amount of which payment shall not exceed the sum of \$50 or 10 percent of the monthly payment price, whichever is less;

10. a provision indicating whether a reinstatement fee shall be required in the event that the rental consumer fails to make timely rental payments and desires to reinstate the rental purchase agreement, which reinstatement fee shall not exceed the sum of \$50 plus any legitimate recovery fees or expenses;

11. a provision indicating whether the rental consumer is liable for loss or damage to the rental property and, if so, the maximum amount for which the rental consumer may be liable;

12. a provision containing the rights of *rental consumer* to terminate the *rental purchase agreement* and the consequences of such termination, if any;

13. a provision regarding the maintenance and repair of the rental property during the rental term and whether the *rental consumer* is responsible for such repairs absent the purchase of a warranty;

14. a provision indicating whether the *rental consumer* is required to secure automobile liability insurance from a licensed insurance agent in the state of Louisiana, and the minimum limits required by the *rental dealer* for both bodily injury and property damage, which, in any event, shall not be less than the minimum limits required by state law.

E. Every *rental purchase agreement* shall be signed by the *rental consumer* and an authorized representative of the *rental dealer*.

F. A *rental purchase agreement* may not contain a provision:

1. requiring a confession of judgment; and
2. authorizing a *rental dealer* or an agent of the *rental dealer* to commit a breach of the peace in the repossession of rental property or to take repossession of the rental property in any manner other than what is permitted in R.S. 14:220.

G. Every *rental dealer* must maintain a contingent automobile liability policy of insurance with minimum limits of \$100,000 per occurrence, \$300,000 aggregate and \$50,000 in property damage. It shall not be sufficient for any Rental Dealer to share in a policy of insurance which could, under any circumstance, create a limit of less than that set forth herein. Such policy shall be placed, if available, through an insurance company licensed by and admitted in the state of Louisiana.

H. A used motor vehicle dealer shall not rent with an option-to-purchase a used motor vehicle that has a recorded lien on file. The lien must be removed through the Office of Motor Vehicles prior to placing the used motor vehicle in the rental program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773.B.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

Chapter 35. Buyer Identification Card

§3503. Qualifications and Eligibility for Buyer Identification Card

A. - A.2. ...

B. The buyer's identification card shall include the name, address, driver's license number, any one of the aforementioned dealers= license numbers, physical description, and signature of the applicant and the name and address of the employer of the applicant. The buyer's identification number to be prefixed with BI, followed by a four-digit number, then the current year (BI-0000-89). Cards obtained for the buyers will be \$25 each for Louisiana resident and \$200 each for out-of-state resident. Out-of-state buyer's must provide proof that they are a licensed used motor vehicle dealer, auto recycler, auto dismantler or employee thereof. A smaller identification card will be issued to all buyer's that will consist of individual's name, driver's license number, social security number, dealership name, dealer number, salesman number, photograph and the individual's signature. This card must be carried with the individual and produced on demand while conducting the business for which this license has been issued.

C. The buyer's identification card shall be carried upon the cardholder's person and same displayed to owner, manager, or person in charge of any salvage pool or salvage disposal sale, representative of the commission or any identifiable law enforcement agent of the state, city or municipality. The buyer's identification card is not transferable or assignable. Physical description and signature of cardholder must be compared with cardholder's driver's license for valid identification by owner, manager, or person in charge of any salvage pool or salvage disposal sale. It shall be the duty of the owner, manager or person in charge of any salvage pool or salvage disposal sale to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid buyer's identification card.

1. Each buyer's identification cardholder may be accompanied to any salvage pool or salvage disposal sale by a mechanic or other technical expert of his choice, prior to the actual sale. At the time of the actual bidding, only valid bid cardholders shall be present.

2. A technical expert is one who is knowledgeable in a specialized field, that knowledge being obtained from either education or personal experience, regarding a subject matter about which persons having no particular training are incapable of forming an accurate opinion or making a correct deduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:762.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:259 (April 1989), amended by LR 15:1058 (December 1989), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

Chapter 39. Business Transactions

§3901. Register of Business Transactions

A. Every used motor vehicle dealer, automotive dismantler and parts recyclers, salvage pool or salvage disposal sale shall keep a register and/or records of all purchases and sales of motor vehicles for three years from the date of purchase or sale, showing the make, model, year, style, vehicle identification number, and name and address of the purchaser or seller of the motor vehicle; to include all titles, purchase agreements, implied and written warranties, disclaimers or service contracts and any other condition of sale or inventory and parts records. A salvage pool or salvage disposal sale, in addition to the foregoing, must also list the buyer's identification number on all transactions.

B. Such registers and/or records shall be made available for inspection by the Used Motor Vehicle and Parts Commission representatives or identified law enforcement officers of the state, parish and municipality where the business of the used motor vehicle dealer, automotive dismantler and parts recyclers, salvage pool or salvage disposal sale is located, during reasonable business hours or business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:757.A-B.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

Chapter 41. Condition of Sale of a Motor Vehicle

§4101. Vehicle Service Contracts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772.F.(3).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:466 (June 1989), repealed by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

§4103. Sale and Marketing of Motor Vehicle Performance Warranty Contracts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:466 (June 1989), repealed by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

Family Impact Statement

The proposed Rules of the Louisiana Used Motor Vehicle and Parts Commission should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested persons may submit written comments no later than 4:30 p.m. on May 20, 2002 to John M. Torrance, Executive Director, 3132 Valley Creek Drive, Baton Rouge, LA, 70808, (225) 925-3870.

John M. Torrance
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Rent with Option-to-Purchase Program, Identification Cards, Register of Records and Extended Warranties

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

The issuance of identification cards for buyers will result in the ordering of 2,200 ID cards, 2,200 envelopes and postage for 2,200 mail outs. The initial cost for implementing this rule will be \$1,598. A 2 percent increase in expenses was calculated for FY 03-04 and FY 04-05. Self-generated funds will be used to cover the cost of this proposed rule.

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

Revenues will not be affected by these proposed rules.

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

Since limits are set regarding certain fees to be charged and security deposits, this may affect the income of the used motor vehicle dealer. These fees are not available to this agency since we do not have a list of the fees currently being charged by the used motor vehicle dealer. The proposed rules will have a positive affect on the consumers by eliminating the possibility of being overcharged.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will have a negative effect on those dealers who are over-charging consumers with regard to fees and security deposits. However, for those dealers who are operating within the proposed rules, there will be no effect on competition and/or employment.

John M. Torrance
Executive Director
0204#024

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Commercial Seafood Inspection Program

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:5, intends to amend and revise Chapter IX Chapter 9:051-1, 9:051-1-A, 9:051-1-F, 9:051-1-F-2, defining Post-Harvest Treatment Process (9:001), and create 9:052-3-F which would adopt the Post-Harvest Processing requirements of the National Shellfish Sanitation Program (NSSP) to Chapter IX of the Louisiana State Sanitary Code. These changes are needed in order for this state to comply with the latest recommendations of the National Shellfish Sanitation Program as required by R.S. 40:5.3.

The first proposed rule change 9:051-1 would delete the words (arranged in the specific order) which is needed in order for this State to comply with the National Shellfish Sanitation Program as required by R.S. 40:5.3. The proposed change would contain the same information regarding shellstock tagging as required by the National Shellfish Sanitation Program, but not in specific order.

The second proposed rule change 9:051-1-A would add the wording (and the original shellstock shipper's number if different) which is needed in order for this State to comply with the National Shellfish Sanitation Program as required by R.S. 40:5.3. The proposed change would contain the same information as required by the National Shellfish Sanitation Program in regards to tagging requirements.

The third proposed rule change 9:051-1-F would add the wording (or their equivalent as approved by the State Authority) which is needed in order for the State to comply with the National Shellfish Sanitation Program as required by R.S. 40:5.3. The proposed rule change would contain the basic information required by the National Shellfish Sanitation Program.

The fourth proposed rule change 9:051-1-F-2 would remove this paragraph in its entirety, since this is not a requirement of the National Shellfish Sanitation Program.

The fifth proposed rule change 9:052-3-F would adopt the Post-Harvest Treatment Processing Requirements of the National Shellfish Sanitation Program (NSSP) to Chapter IX of the Louisiana State Sanitary Code and Section 9:001 would define Post-Harvest Treatment Process.

The proposed revisions to Chapter IX are as follows.

Louisiana State Sanitary Code

Chapter IX Commercial Seafood Inspection Program

9:001 Definitions

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:

* * * ?

Post-Harvest Processing Ca treatment process approved by the Louisiana Department of Health and Hospitals Office of Public Health by which oysters are treated to reduce levels of *Vibrio vulnificus* and/or *Vibrio parahaemolyticus* and/or other specified pathogens to non-detectable levels.

* * *

9:051-1

The initial tagging of the shell-stock shall be performed by the harvester before the shell-stock are removed from the harvester's boat. In the event that shell-stock are harvested from more than one growing area on a given day, the shell-stock shall be sacked and tagged before leaving from the growing area from which the shell-stock was harvested. The harvester's tags shall contain legible information as follows:

9:051-1-A

A place shall be provided where the dealers name, address, certification number assigned by the Office of Public Health, Seafood Sanitation Program and the original shell-stock shipper's number if different.

9:051-1-B

The harvester's identification number assigned by the Department of Wildlife and Fisheries;

9:051-1-C

The date of harvesting;

9:051-1-D

The most precise identification of the harvest site or aquaculture location as practicable;

9:051-1-E

Type and quantity of shellfish; and

9:051-1-F

The following additional statements or their equivalent as approved by the State Authority shall appear on each tag in bold capitalized letters:

9:051-1-F-1

THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.

9:051-1-F-2 Delete the following paragraph and re-number 9:051-F-3 to 9:051-F-2 and retain same language.

THIS PRODUCT SHOULD NOT BE CONSUMED RAW AFTER 14 DAYS FROM THE DATE OF HARVEST; BEYOND THIS 14-DAY PERIOD, THIS PRODUCT SHOULD BE THOROUGHLY COOKED.

9:051-F-2

AS IS THE CASE WITH CONSUMING OTHER RAW ANIMAL PROTEIN PRODUCTS, THERE IS A RISK ASSOCIATED WITH CONSUMING RAW OYSTERS, CLAIMS AND MUSSELS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH, OR BLOOD OR HAVE IMMUNE DISORDERS, DO NOT EAT THESE PRODUCTS RAW. RETAILERS PLEASE ADVISE CUSTOMERS. (Repromulgated 02/20/91 and 05/20/93 and 08/20/95)

9:052-3-F-Post-Harvest Processing

(A) If a dealer elects to use a process to reduce the level(s) of one target pathogen or some target pathogens, or all pathogens of public health concern in shellfish, the dealer shall:

(1) Have a Hazard Analysis Critical Control Point (HACCP) plan approved by the Authority for the process that ensures that the target pathogen(s) are at safe levels for the at risk population in product that has been subjected to the process.

(a) For processes that target *Vibrio vulnificus*, the level of *Vibrio vulnificus* in product that has been subjected to the process shall be non-detectable (<3 MPN/gram), to be determined by use of the *Vibrio vulnificus* FDA approved EIA procedure of Tamplin, et al, as described in Chapter 9 of the FDA Bacteriological Analytical Manual, 7th Edition, 1992.

(b) For processes that target *Vibrio parahaemolyticus*, the level of *Vibrio parahaemolyticus* in product that has been subjected to the process shall be non-detectable (<1 CFU/0.1 gram).

(c) For processes that target other pathogens, the level of those pathogens in product that has been subjected to the process shall be below the appropriate FDA action level, or, in the absence of such a level, below the appropriate level as determined by the ISSC.

(d) The ability of the process to reliably achieve the appropriate reduction in the target pathogen(s) shall be validated by a study approved by the Authority, with the concurrence of FDA.

(e) The HACCP plan shall include:

(i) Process controls to ensure that the end point criteria are met for every lot; and,

(ii) A sampling program to periodically verify that the end point criteria are met.

(2) Package and label all shellfish in accordance with all requirements of this Ordinance. This includes labeling all shellfish which have been subjected to the process but which are not frozen in accordance with applicable shellfish tagging and labeling requirements in Chapter X.05 and X.06 of the National Shellfish Sanitation Program Model Ordinance.

(3) Keep records in accordance with Chapter X.07 of the National Shellfish Sanitation Program Model Ordinance.

(B) A dealer who meets the requirements of this section may label product that has been subjected to the reduction process as :

(1) "Processed for added safety," if the process reduces the levels of all pathogens of public health concern to safe levels for the at risk population;

(2) "Processed to reduce [name of target pathogen(s)] to non-detectable levels," if the process reduces one or more, but not all, pathogens of public health concern to safe levels for the at risk population, and if that level is non-detectable; or

(3) "Processed to reduce [name of target pathogen(s)] to non-detectable levels for added safety," if the process reduces one or more, but not all, pathogens of public health concern to safe levels for the at risk population, and if that level is non-detectable; or

(4) A term that describes the type of process applied (e.g. "pasteurized," "individually quick frozen," "pressure treated") may be substituted for the word "processed" in the options contained in (B)(1)-(3).

(C) For the purposes of refrigeration, if the end product is dead, the product shall be treated as shucked product. If the end product is live, the product shall be treated as shellstock.

(D) A Harvester-Dealer Oyster Tag, blue in color, shall be used for shellstock that has undergone a Post-Harvest Treatment Process.

(E) Certification number of the Post-Harvest treatment facility is required on all Post-Harvest treated tags.

A public hearing on the adoption by reference will be held on Friday, May 24, 2002 at 10:00 a.m. at 325 Loyola Avenue Room 511 New Orleans, La. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

Interested persons may submit written comments to David Guilbeau, Sanitarian Program Administrator, Commercial Seafood Program, 6867 Bluebonnet Blvd., Baton Rouge, LA 70810 by the close of business on May 27, 2002. He is responsible for responding to inquiries regarding this adoption.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Commercial Seafood
Inspection Program**

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

There will be no savings or cost to local units. In Fiscal Year 2001/2002 the agency will incur a one-time fee of approximately \$160.00 for publication in the Louisiana State Register.

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

There will be no effect on revenue collections of state or local governmental units.

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

No economic benefit and estimates cost will vary with individual firms.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Since this is a relatively new process, it is yet to be determined if there will be any impact on competition and employment in either the public or private as results of this rule adoption.

Madeline McAndrew
Assistant Secretary
0204#051

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Onsite Wastewater Program Lot Size Clarification

Notice is hereby given, in accordance with provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health intends to amend and revise Chapter XIII Section 13:011-2(7) of the Louisiana Sanitary Code, pursuant to R.S. 40:4, as amended by Acts 1978, No. 786; Acts 1982, No. 619; Acts 1986, No. 885; Acts 1988, No. 942. The amendment to this portion of the Louisiana Sanitary Code is necessary in order to clarify the intent of lot size restrictions, and is not the result of a legislative bill.

The proposed rule change to 13:011-2(7) would add language which sets a minimum lot size which can qualify for individual sewage treatment technology. The proposed revision to Chapter XIII is as follows.

**Louisiana State Sanitary Code
Chapter XIII Sewage Disposal**

13:011-2 Community Sewerage System Required:

13:011-2. 1-6.c. ...

7. Where lots of "record" (i.e., lots created by formal subdivision prior to July 28, 1967) are combined (in accord with the definition of a subdivision) to create a new, larger, single lot, and no re-subdivision of the property is involved. On July 20, 2002 and thereafter, in no case shall the newly created lots have less than 50 feet of frontage or be less than 5000 square feet in area.

* * *

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

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of Public Health, LR 10:802 (October 1984); Emergency Rule (July 24, 1985) and LR 11:1086 (November 1985); LR 19:49 (January 1993); LR 28:

A public hearing will be held on Friday, May 24, 2002 at 10:30 a.m. in the State Office Building, Room 511, 325 Loyola Avenue, New Orleans, LA. Written comments regarding the proposed rule must be received no later than May 27, 2002 and should be addressed to James Antoon, Chief, Sanitarian Services, 6867 Bluebonnet, Baton Rouge, LA 70810.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Onsite Wastewater Program
Lot Size Clarification**

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

There will be an estimated \$120 implementation cost for the publication of this rulemaking in the Louisiana Register during FY 2001/2002.

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

No increased revenue collections are expected to accrue to state and local governmental units as a result of this rule.

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

There are no projected persons or non-governmental groups affected by the proposed action which is a clarification of provisions of the Louisiana State Sanitary Code.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no projected impact on competition and employment in the public and private sectors.

Madeline W. McAndrew
Assistant Secretary
0204#053

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary**

Capital Area Human Services District
(LAC 48:I.Chapter 27)

Under the authority of R.S. 46:2661 et seq. as enacted by Act 54 of the first Extraordinary Session of 1999, the Department of Health and Hospitals proposes to adopt the following rule.

Title 48

PUBLIC HEALTH GENERAL

Part I. General Administration

Subpart 1. General

Chapter 27. Capital Area Human Services District

§2701. Introduction

A. This agreement is entered into by and between Department of Health and Hospitals, hereinafter referred to as DHH, and Capital Area Human Services District, hereinafter referred to as CAHSD, in compliance with LA R.S. 46:2661 through 46:2666 as well as any subsequent legislation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2703. Purpose and General Agreement

A. The Department of Health and Hospitals is authorized by law to provide for the direction, operation, development and management of programs of community-based mental health, mental retardation/developmental disabilities, addictive disorders, public health and related activities for eligible consumers in Louisiana.

B. R.S. 46:2661-2666 et seq. authorizes CAHSD to provide services of community-based mental health, developmental disabilities, addictive disorders, public health and related activities for eligible consumers in the CAHSD, which includes East Baton Rouge, West Baton Rouge, Ascension, Iberville, and East and West Feliciana, Pointe Coupee parishes; and to assure that services meet all relevant federal and state regulations; and to provide the functions necessary for the administration of such services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2705. Designation of Liaisons

A. The primary liaison persons under this agreement are:

1. for DHH Deputy Secretary;
2. for CAHSD Chairperson.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2709. Services to be Delivered

A. In order to provide a broad spectrum of coordinated public services to consumers of the Office of Mental Health hereinafter referred to as OMH, the Office for Citizens with Developmental Disabilities hereinafter referred to as OCDD, the Office for Addictive Disorders hereinafter referred to as OAD, the Office of Public Health hereinafter referred to as OPH and for the District Administration, the CAHSD will assume programmatic, administrative and fiscal responsibilities for including, but not limited to, the following:

1. OCDD community support;
2. mental health services consistent with the State Mental Health Plan, as required under the annual Mental Health Block Grant Plan;
3. outpatient treatment (non-intensive)-OAD;
4. community-based services-OAD;
5. intensive outpatient treatment/day treatment-OAD;
6. non-medical/social detoxification-OAD;
7. primary prevention-OAD;
8. adult inpatient treatment services-OAD;
9. transition to recovery homes (when funds and placements are available);
10. residential board and care (when funds and placements are available)-OAD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2711. Responsibilities of Each Party

A. CAHSD accepts the following responsibilities:

1. to perform the functions which provide community-based services and continuity of care for the diagnosis, prevention, detection, treatment, rehabilitation and follow-up care of mental and emotional illness;
2. to be responsible for community-based programs and functions relating to the care, diagnosis, eligibility determination, training, treatment, and case management of developmentally disabled and autistic persons as defined by the MRDD law, and to follow the rule governing admissions to OCDD Developmental Centers;

3. to be responsible for the delivery and supervision of transition services and case management and provide supports to person waiting for Waiver Services when an individual transitions to the community.

4. to provide for the gradual assumption of community-based public health services which will be determined to be feasible through consultation with the Office of Public Health;

5. to provide services related to the care, diagnosis, training, treatment, and education of, and primary prevention of addiction. The criteria for admission and treatment must be parallel to OAD state operated programs;

6. to maintain services in community-based mental health, developmental disabilities, and substance abuse at least at the same level as the state maintains similar programs;

7. to ensure that the quality of services delivered is equal to or higher than the quality of services previously delivered by the state;

8. to perform human resources functions necessary for the operation of the CAHSD;

9. to be responsible for the provision of any function/service, reporting or monitoring, mandated by the Block Grant Plan of each respective program office;

10. to provide systems management and services data/reports in a format, and content, and frequency content as that required of all regions by each DHH program office. Specific content of required information sets will be negotiated and issued annually through program office directives;

11. to utilize ARAMIS, MIS, Mental Health's SPOE and any other required DHH/program office systems to meet state and federal reporting requirements. The CAHSD will use the OCDD Individual Tracking System and/or other designated MIS system OCDD will allow OCDD to electronically upload and download information at prescribed intervals. No information will be uploaded by OCDD without prior notification of CAHSD;

12. to make available human resource staffing data for on-site review;

13. to maintain and support Single Point of Entry (SPOE) state standard;

14. to provide for successful delivery of services to persons discharged from state facilities into the CAHSD service area by collaborative discharge planning;

15. to provide in-kind or hard match resources as required for acceptance of federal grant or entitlement funds utilized for services in the CAHSD as appropriately and collaboratively applied for;

16. to make available a list of all social and professional services available to children and adults through contractual agreement with local providers. List shall include names of contractor, dollar figure and brief description of services;

17. to work with OAD to assure that all requirements and set asides of the Substance Abuse Block Grant are adhered to in the delivery of services;

18. to develop and utilize a 5 year strategic plan as required by Act 1465;

19. to monitor the quality of supports delivered to developmentally disabled individuals in state funded supported living arrangements;

20. to report to OMH on a monthly basis data consistent with that reported in DHH operated regions in order to assure statewide data integrity and comparability across all 64 parishes. The format for reporting this information must comply with OMH data transmission requirements as specified by the Assistant Secretary for OMH;

21. to further all other CAHSD sites currently receiving materials from OPH shall continue to receive such provided current level funding is available from State and Federal resources. Availability of materials shall also be based on the incidence rate of HIV in Region II and throughout the state.

22. to comply with OAD movement toward research-proven best practices and adhere to the established standard of care.

B. DHH retains/accepts the following responsibilities:

1. operation and management of any inpatient facility under jurisdiction of the DHH except that the CAHSD shall have authority and responsibility for determination of eligibility for receipt of such inpatient services (mental health's single point of entry function) which were determined at the regional level prior to the initiation of this Agreement;

2. operation, management and performance of functions and services for environmental health;

3. operation, management and performance of functions related to the Louisiana Vital Records Registry and the collection of vital statistics;

4. operation, management and performance of functions and services related to laboratory analysis in the area of personal and environmental health;

5. operation, management and performance of functions and services related to education provided by or authorized by any state or local educational agency;

6. monitoring this service agreement, assuring corrective action through coordination with CAHSD and reporting failures to comply to the Governor's office;

7. operation, management and performance of functions for pre-admission screening and resident review process for Nursing Home Reform;

8. sharing with CAHSD information regarding but not limited to program data, statistical data, and planning documents that pertain to the CAHSD. Statewide information provided on a regional basis to providers, consumers, and advocates, shall either include accurate data for CAHSD, as confirmed by CAHSD or shall include a statement that information for Region 2 (CAHSD) is available on request. This is necessary to make community stakeholders aware that CAHSD is participating in the submission of the same data reports as are required of the other regions;

9. communicating any planned amendments to current law establishing CAHSD, or new legislation that is primarily directed to impacting CAHSD funding or administration or programs, prior to submission to the Governor's Office or to a legislative author;

10. reporting of statewide performance or comparisons, which are circulated outside of the DHH Program Offices, which include data submitted directly by CAHSD, or which are generated from data transmission program in which CAHSD participants will be provided to CAHSD;

11. providing fair and equal access to all appropriately referred citizens residing in the parishes served by CAHSD;

12. inviting the CAHSD CSRM to OCDD meetings that include the CSRM's of the 8 regions under OCDD administration, when appropriate;

13. meeting with CAHSD to discuss and plan for any necessary upgrades in hardware, software or other devices necessary for the electronic submission of data which is required of CAHSD;

a. CAHD's Executive Director shall be included in discussions that specifically relate to changes in CAHSD program or financing, prior to final decision-making.

15. in general, planning, managing and delivering services funded under this agreement as required in order to be consistent with the priorities, policies and strategic plans of DHH, its program offices, and related local initiatives. DHH shall include the CAHSD as appropriate in the development of these plans and priorities;

16. determining if community-based mental health, developmental disabilities, addictive disorders, and public health services are delivered at least at the same level by CAHSD as the State provides for similar programs in other areas, performance indicators shall be established. Such indicators will measure extensiveness of services, accessibility of services, availability of services and, most important, quality of services. The CAHSD will not be required to meet performance indicators which are not mandated for state-operated programs in these service areas.

C. Joint Responsibilities

1. CAHSD's progress toward achieving outcomes which meet or exceed those realized by DHH-operated programs in the affected geographic region shall be measured by comparing the CAHSD data on results to baseline statistics reported by Regional DHH programs for the year prior to July 1, 1997. Specific outcome measurements/performance indicators to be compared will be jointly agreed upon by CAHSD and DHH.

2. The CAHSD shall work closely with OCDD in transitioning individuals from all Developmental Centers to the district and will be responsible for the oversight of the service providers to ensure that their recipient receives appropriate services and outcomes as designated in the Comprehensive Plan of Care.

3. CAHSD will work with the Office for Addictive Disorders to assure the key performance indicators sent to the DOA are the same for CAHSD and Office for Addictive Disorders.

4. CAHSD will work with the Office for Addictive Disorders to assure there is a clear audit trail for linking alcohol and drug abuse funding and staffing to alcohol and drug abuse services.

5. CAHSD will collaborate with Region II OPH managers to assist them to perform community-based functions which provide services and continuity of care for education, prevention, detection, treatment, rehabilitation and follow up care related to personal health.

6. The CAHSD shall notify the DHH Bureau of Legal Services and relative Program Office in a timely manner to assure proper representation in all judicial commitments and court events involving placement in DHH programs. The CAHSD shall also provide program staff as representatives to assist DHH in all judicial commitments and court events

involving placement in DHH programs. DHH will provide legal support and representation in judicial commitments to the Department.

7. Budget request for new and expanded programs or request for additional funding for existing programs will be discussed with the appropriate personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2713. Reallocation of Resources/Staff and Financial Agreements

A. For FY01/02, DHH agrees to transfer financial resources in accordance with the memorandum of understanding to the direction and management of the CAHSD. The financial resources will be adjusted based upon the final appropriation for the CAHSD.

B. The CAHSD will submit to DHH an annual budget request for funding of the cost for providing the services and programs for which the CAHSD is responsible. The format for such request shall be consistent with that required by the Division of Administration and DHH. The request shall conform with the time frame established by DHH. CAHSD Executive Director will submit new and expanded program requests to the Office of the Secretary prior to submission to DOA.

C. The CAHSD shall operate within its budget allocation and report budget expenditures to the DHH.

D. Revisions of the budget may be made upon written consent between the CAHSD and DHH and, as appropriate, through the Legislative Budget Committee's BA-7 process. In the event any additional funding is appropriated and received by DHH that affects any budget categories for the direction, operation, and management of the programs of mental health, mental retardation/developmental disabilities, addictive disorders services, and public health, and related activities for any other such DHH entities or regions, the CAHSD will receive additional funds on the same basis as other program offices. In the event of a budget reduction, CAHSD will receive a proportionate reduction in its budget.

E. CAHSD shall bill DHH agencies for services they provide in a timely manner.

F. CAHSD shall not bill any DHH agency more than is shown in Attachment 1.

G. The CAHSD shall assume all financial assets and/or liabilities associated with the programs transferred.

H. CAHSD shall be responsible for repayment of any funds received which are determined ineligible and subsequently disallowed.

I. DHH shall continue to provide to CAHSD certain support services from the Office of the Secretary and from the Office of Management and Finance which are available to the regional program offices of OCDD, OMH, OAD, and OPH. The services CAHSD will continue to receive, at the level provided to other regions are:

1. communications and inquiry;
2. internal audit, fiscal management;
3. information services;
4. facility management;
5. lease management; and
6. research and development.

J. CAHSD will participate in the planning and ongoing updates to the development of a resource allocation formula

for OAD funding and comply with cost benefit analyses and outcome.

K. CAHSD will comply with the resource allocation formula and adjustments in the funding for CAHSD may be made according to this formula.

L. Should the implementation of the Area structure change the means of financing in a way that would negatively impact total funds received by the CAHSD for MH services, OMH would structurally guarantee the ability to bill for/collect funds for the service provided, or fund the District in the amount the total CAHSD/OMH portion of its budget would not be decreased from what would be allocated or collected by the other regions.

M. Funding for all medications needed by OMH Forensic clients released from the hospital into CAHSD shall be provided to CAHSD as described in the MOU between OMH and CAHSD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2715. Joint Training and Meetings

A. CAHSD, through its staff, will participate in DHH and other programmatic training, meetings and other activities as agreed upon by CAHSD and DHH. In a reciprocal manner, CAHSD will provide meetings, training sessions, and other activities that will be available for participation by DHH staff as mutually agreed upon by the CAHSD and the DHH. All program office meetings (trainings, information dissemination, policy development, etc.) discussing/presenting information with statewide implications shall include CAHSD staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2717. Special Provisions

A. The CAHSD agrees to abide by all applicable Federal, State, and Parish laws regarding nondiscrimination in service delivery and/or employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, disabled veteran, veteran status, or any other non-merit factor.

B. The CAHSD shall maintain a property control system of all movable property in the possession of the CAHSD that was formally under the control of DHH, and of all additional property acquired.

C. For purposes of purchasing, travel reimbursement, and securing of social service/professional contracts, the CAHSD shall utilize established written bid/RFP policies and procedures. Such policies and procedures shall be developed in adherence to applicable statutory and administrative requirements. The CAHSD shall provide informational copies of such policies and procedures to DHH as requested.

D. The CAHSD shall abide by all court rulings and orders that affect DHH and impact entities under the CAHSD's control, and shall make reports to DHH's Bureau of Protective Services of all applicable cases of alleged abuse, neglect, exploitation, or extortion of individuals in need of protection in a format prescribed by DHH.

E. If OAD is successful in establishing an Inpatient Gambling program, this will not be managed by CAHSD since this is a statewide program.

F. In the event of a Departmental budget reduction in state general funds, or federal funds equivalent, CAHSD shall share in that reduction consistent with other DHH Agencies. If reductions occur through Executive Order, DOA, or legislative action in the appropriation schedule 09, and CAHSD is included in these reductions, then these same reductions shall not be reassessed to CAHSD by DHH agencies.

G. CAHSD shall have membership on the Region II Planning Group and the Statewide Planning Group for the HIV/AIDS Prevention Program. CAHSD shall be a voting member of the Region II Planning Group (RPG). CAHSD shall be a non-voting member of the Statewide Planning Group (SPG) unless the CAHSD member is also elected by the Region II RPG as its official delegate to the SPG. In such case, the CAHSD representative shall vote as the representative of the Region II RPG.

H. CAHSD can obtain a copy of all Region II contracts negotiated by OPH for the delivery of HIV/AIDS Prevention services by CBO's in the seven parish area served by CAHSD.

I. CAHSD can obtain a copy of all requests for funding, solicitation of offers, notices of funding availability and other such comparable documents sent out by OPH relative to community-based HIV Prevention and Treatment Services for Region II as well as any such notices received by OPH and not chosen for application by them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§2719. Renewal/Termination

A. This agreement will cover the period of time from July 1, 2001 to June 30, 2002.

B. This agreement will be revised on an annual basis, as required by law, and will be promulgated through the Administrative Procedure Act. The annual agreement shall be published in the state register each year in order for significant changes to be considered in the budget process for the ensuing fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the LA legislature the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, family formation, stability or autonomy as described in R.S. 49:972.

Interested persons may submit written comment thru May 20, 2002 to John A. LaCour, DHH, Office of the Secretary, P.O. Box 629, Baton Rouge, Louisiana 70821-0629. He is the person responsible for responding to inquiries regarding this proposed rule.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Capital Area Human Services District

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

Administrative cost associated with the Capital Area Human Services District (CAHSD) will be paid by the Department of Health and Hospitals (DHH) for FY 01-02 in accordance with the annual service agreement. Estimated cost of printing the Notice of Intent and The Rule is \$920.

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

There is no estimated effect on revenue collections of state or local governmental units.

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

There is no estimated costs and/or economic benefits to directly to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

David W. Hood
Secretary
0204#056

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Minimum Licensing Standards CEnd Stage
Renal Disease Treatment Facilities
(LAC 48:I.Chapter 84)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Act 650 of the 1999 Regular Session of the Louisiana Legislature, in accordance with R.S. 40:2117.4, authorized the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing to promulgate rules addressing the Minimum Licensing Standards for End Stage Renal Disease Treatment Facilities. Act 650 states that any facility that presents itself to the public as a supplier of services related to dialysis/treatment for end stage renal disease is required to have a valid and current license prior to admitting any patients. The Bureau proposes to adopt the following licensing standards for all end stage renal disease treatment facilities in the State of Louisiana.

All facilities licensed after the final rule is published will be required to meet all licensing standards contained in this rule prior to receiving a license. The minimum standards for end stage renal disease treatment facilities are promulgated in accordance with the *Louisiana Administrative Code*

format and supersede all manuals and rules previously adopted.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule governing the licensing of End Stage Renal Disease Treatment Facilities/Programs. All previous rules are hereby repealed and this rule shall replace and supersede rules previously adopted.

Title 48

PUBLIC HEALTHC GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 84. End Stage Renal Disease Treatment Facilities

Subchapter A. General Provisions

§8401. Acronyms and Definitions

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Abuse Any act or failure to act that caused or may have caused injury to a patient knowingly, recklessly, or intentionally, including incitement to act. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Patient abuse includes:

- a. any sexual activity between facility personnel and a patient;
- b. corporal punishment;
- c. efforts to intimidate;
- d. the use of any form of communication to threaten, curse, shame, or degrade a patient;
- e. restraints that do not conform to standard practice;
- f. coercive or restrictive actions that are illegal or not justified by the patient's condition, taken in response to the patient's request for discharge or refusal of medication or treatment; and
- g. any other act or omission classified as abuse by Louisiana law.

Acronyms (Federal)C

CFR Code of Federal Regulations

CMSC Centers for Medicare and Medicaid Services

Network(13)C Federal ESRD Quality Assurance Supplier

PRO Peer Review Organization

Adequacy of Dialysis Cterm describing the outcome of dialysis treatment as measured by clinical laboratory procedures.

Adequate/Sufficient Creasonable, enough: e.g., personnel to meet the needs of the patients.

Advertise Cto solicit or induce to purchase the services provided by a facility.

Assessment Cgathering of information relative to physiological, behavioral, sociological, spiritual and environmental impairments and strengths of the patient using the skills, education, and experience of ones professional scope of practice.

Board(s) Entities responsible for licensing/certification of specific professions (e.g., nursing, counselors, social workers, physicians, etc.). State of Louisiana *Boards* are the only accepted licensing organizations for all personnel.

Chronic Maintenance Dialysis dialysis that is regularly furnished to an End Stage Renal Disease (ESRD) patient in a hospital-based, independent (free-standing), or home setting.

Consultation professional oversight, advice, or services provided under contract.

Consumer/Patient person assigned or accepted for treatment furnished by a licensed facility as specified.

Delegation of Tasks assignment of duties by a registered nurse to a licensed practical nurse, or other personnel with respect to their training, ability and experience. The registered nurse cannot delegate complex nursing tasks that have not been approved as appropriate for delegation, responsibility, or tasks requiring judgment.

Department the Louisiana Department of Health and Hospitals (DHH). The following is a list of pertinent sections of DHH:

a. **Health Standards Section (HSS)** the section within the Bureau of Health Services Financing that is responsible for conducting surveys, issuing licenses, and serving as the regulatory body for health care facilities in the state.

b. **Office for Public Health (OPH)** the office that is responsible for the development and enforcement of public health regulations and codes.

c. **Program Integrity Section** the section within the Bureau of Health Services Financing that is responsible for investigating alleged fraud and abuse.

d. **Dialysis** a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane. The two types of dialysis that are currently in common use are hemodialysis and peritoneal dialysis.

End-Stage Renal Disease (ESRD) that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

End-Stage Renal Disease Treatment Facility a facility that presents to the public as a supplier of chronic dialysis services including, at least, hemodialysis, but may also include peritoneal dialysis, home training, or home support.

Exploitation any act or process to use (either directly or indirectly) the labor or resources of a patient for monetary or personal benefit, profit, or gain of another individual or organization. Examples of exploitation include:

a. use of a patient's personal resources such as credit cards, medical assistance cards, or insurance cards to bill for inappropriate services;

b. use of the patient's food stamps or other income to purchase food or services used primarily by others; and

c. using the patient to solicit money or anything of value from the public.

Facility a supplier of services, including all employees, consultants, managers, owners, and volunteers as well as the premises and activities.

Facility Protocols the guidelines developed and utilized by facility staff to standardize patient care orders by

providing direction from physicians to registered nurses. The facility protocols do not substitute for the physician's orders.

Medication Administration the preparation and giving of legally prescribed individual doses of medication to a patient, including the observation and monitoring of the patient's response to the medication.

Medication Dispensing the compounding, packaging, and giving of legally prescribed multiple doses of medication to a patient.

Neglect failure to provide adequate health care or failure to provide a safe environment that is free from abuse or danger; failure to maintain adequate numbers of appropriately trained staff; or any other act or omission classified as neglect by Louisiana law.

Office of the State Fire Marshal (OSFM) the office that is responsible for establishing and enforcing the regulations governing building codes, including Life Safety Codes for healthcare facilities.

On Call immediately available for telephone consultation.

On Duty scheduled, present, and awake at the site to perform job duties.

Sexual Exploitation a pattern, practice, or scheme of conduct that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment.

Site/Premises can identifiable location owned, leased, or controlled by a facility where any element of treatment is offered or provided.

Stable Patient a patient who has met facility established criteria for 90 days and continues to meet that criteria which includes parameters for, at least, adequacy of treatment, lack of hospitalizations, lack of serious health problems, and compliance with physician's orders.

Staff individuals who provide services for the facility in exchange for money or other compensation, including employees, contract providers/suppliers, and consultants.

Standards policies, procedures, rules, and other guidelines (i.e., standards of current practice) contained in this document for the licensing and operation of end-stage renal disease treatment facilities.

Supervision occupational oversight, responsibility and control over employees and/or service delivery by critically watching, monitoring, and providing direction.

Unethical Conduct conduct prohibited by the ethical standards adopted by DHH, state or national professional organizations or by a state licensing agency.

Unprofessional Conduct any act or omission that violates commonly accepted standards of behavior for individuals or organizations.

Unstable Patient patient who is experiencing a change in their medical condition or otherwise does not meet the definition of a stable patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8403. Licensing

A. Any facility that presents itself to the public as a supplier of chronic dialysis treatment services and/or dialysis training to individuals diagnosed with end stage renal disease is required to have a valid and current license. The facility shall not provide services without the appropriate license and shall advertise (or otherwise notify the public or other referral entities) only for services that the facility is licensed to provide. Each licensed facility must comply with the minimum requirements in order to remain licensed. In addition, each facility is required to have a copy of the minimum standards on site, and all administrative and professional staff should be familiar with the minimum standards.

B. In order to be licensed as an ESRD facility in Louisiana the facility must also be in continuous compliance with federal regulatory requirements applicable to ESRD facilities, including but not limited to: 42 CFR §405.2135-2140; 42 CFR §405.2150, and 2160-2164.

C. The initial application process assures that the facility is capable of organizing and planning an operation to provide dialysis services as designated on the license. The application packet and procedures may be obtained from DHH/HSS. The entire application process must be completed within 90 days from the date of the original submission of a current application and application fee in order to be approved, unless an extension is granted.

D. Renewal. A license must be renewed at least annually.

E. License Types

1. Full License. A full license is issued to agencies that are in compliance with the minimum standards and all other licensing requirements. The license is valid until the date of expiration unless it is revoked or suspended prior to the date of expiration, or the license renewal is denied.

2. Provisional License. A provisional license is issued to facilities that are not in compliance with the minimum standards and whose license will be terminated if systemic changes fail to correct identified problems. Cited deficiencies shall not be detrimental to the health and safety of clients. A provisional license is valid for six months or until a designated termination date.

F. The current license shall be displayed on-site at each facility. Any license issued by DHH supersedes all other licenses and those previously issued licenses are deemed invalid. Any facility displaying and/or using an invalid or altered license will be sanctioned.

G Notification of Change. Failure to report any of the following changes in writing to HSS within 10 days of the occurrence of the change is considered delinquent and subject to sanction. Written approval of changes by DHH is required for the facility to remain in compliance with licensing standards. An on-site survey, at the discretion of HSS, may be required prior to issuance of a new license.

1. Change of Ownership. A license is non-transferable. The new owners must apply for a new license and submit a new application form, copy of the bill of sale, licensing fee, disclosure of ownership form, and information regarding relocation, name change, etc.

2. New Construction. All plans must have prior approval of the OSFM and Division of Architectural Services.

3. Renovations. All plans must have prior approval of the OSFM and Division of Architectural Services, when required.

4. Change of Address. Address changes require the issuance of a replacement license and must be prior authorized. Authorization is based on the submission of requested information to HSS.

5. Change in Services. Providing additional services requires the submission of an application packet appropriate to the new service. Interim approval may be granted based on the review of the submitted documentation. Permanent approval will be granted automatically at the next on-site survey unless the facility is found to be out of compliance. Deleting existing services requires the submission of written notification to HSS.

6. Days of Operation. Written notification to HSS is required in advance of any change in the facility's days of operation.

H. If at any time the facility decides to cease operations, the facility shall notify HSS of the date of the cessation of services, the permanent location of the records and surrender the license.

1. All active patients and pertinent information shall be referred/transferred to the nearest appropriate treatment facility.

2. Written notification and the license shall be sent to HSS within five working days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8405. Fees, Fines, and Assessments

A. All fees must be submitted to DHH in the form of a company or certified check or money order, and made payable to the Department of Health and Hospitals. All fees are non-refundable and non-transferable.

1. The current fee schedule is available upon request.

2. The fee for the initial application and licensing process shall be submitted prior to review and consideration of the licensing application.

3. The annual renewal fee is payable in advance of the issuance of the renewal license.

4. A fee must accompany any request requiring the issuance of a replacement license.

5. A renewal or other fee is considered delinquent after the due date and an additional fee shall be assessed beginning on the day after the date due. No license will be issued until applicable fees are paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8407. Survey

A. All surveys shall be unannounced and may be conducted with other agency personnel and/or personnel from other local, state or federal agencies. A survey of all aspects of the facility's operation is required prior to issuing a license.

B. Initial Survey. DHH shall determine through an on-site review if the facility is capable of becoming fully

operational. The procedures for the on-site review may be obtained from HSS.

C. Annual Survey. An on-site survey of the facility is performed or an attestation from the facility is received annually to assure continuous adherence to standards.

D. Follow-Up Surveys. An on-site visit is performed or documentation is requested for a desk review to ensure that corrective actions have been taken as stated in the plan of corrections and to assure continued compliance between surveys.

E. DHH shall determine the type and extent of investigation to be made in response to complaints in accordance with R.S. 40:2009.13 et seq.

1. The facility may be required to do an internal investigation and submit a report to HSS.

2. HSS and other federal, state and local agencies may conduct an on-site focused or complete survey as appropriate.

F. All survey results will be available for public inspection 60 days after the survey or on the date that an acceptable plan of correction is received from the facility, whichever is sooner.

1. The facility may be allowed up to 60 days to make all necessary corrections for minor violations that do not directly involve patient care.

2. Adverse action will be initiated for violations that are not minor or directly affect patient care.

G. Written plans of correction shall be submitted to HSS to describe actions taken by the facility in response to cited violations. The plan must be submitted within 10 days of the date of the receipt of the notice of deficiencies, or the provider may be sanctioned. All components of the corrective action plan must be specific and realistic, including the dates of completion.

1. The correction plan shall include the following components:

a. the actions taken to correct any problems caused by a deficient practice directed to a specific patient;

b. the actions taken to identify other patients who may also have been affected by a deficient practice, and to assure that corrective action will have a positive impact for all patients;

c. the systemic changes made to ensure that the deficient practice will not recur;

d. a monitoring plan developed to prevent recurrence; and

e. the date(s) when corrective action will be completed.

H. Corrections must be completed within 60 days of the survey unless HSS directs that corrective action be completed in less time due to danger or potential danger to patients or staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8409. Adverse Actions

A. DHH reserves the right to suspend, deny (initial or renewal), or revoke any license at the discretion of the Secretary or his/her designee. Any involuntary termination of a facility's license or voluntary termination to avoid adverse action automatically disqualifies the facility and

those associated with the facility from applying for a license for a period of at least one year.

B. Provisional License Designation. See §8403.E.2.

C. Denial of Initial Licensing. An initial license request may be denied in accordance with R.S. 40:2117.5(A).

D. A license may be revoked or denied for any of the following nonexclusive reasons. See also R.S. 40:2117.5.

1. cruelty or indifference to the welfare of the patients;

2. misappropriation or conversion of the property of the patients; or

3. violation of any provision of this Part or of the minimum standards, rules, regulations, or orders promulgated hereunder:

a. providing services to more stations than authorized by license;

b. repeated failure to adhere to rules and regulations that resulted in the issuance of a provisional license or other sanction;

c. serious violation of the standards or current professional standards of practice;

d. failure to submit corrective action plans for identified violations;

e. reasonable cause to suspect that patient health and/or safety is jeopardized;

f. reliable evidence that the facility has:

i. falsified records;

ii. failed to provide optimum therapy in accordance with current standards of practice; or

iii. has bribed, solicited or harassed any person to use the services of any particular facility;

g. failure to submit required fees in a timely manner;

h. failure to cooperate with a survey and/or investigation by DHH and/or authorized agencies;

i. failure to employ and utilize qualified professionals; or

j. failure to meet operational requirements as defined in §8423.C;

4. permitting, aiding, or abetting the unlawful, illicit, or unauthorized use of drugs or alcohol within the facility;

5. conviction or plea of nolo contendere by the applicant for a felony. If the applicant is an agency, the head of that agency must be free of such conviction. If a subordinate employee is convicted of a felony, the matter must be handled administratively to the satisfaction of HSS;

6. documented information of past or present conduct or practices of the facility that are detrimental to the welfare of the patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8411. Appeals

A. The Health Standards Section shall give at least 30 days notice of the denial of renewal or revocation of license unless it determines that the health and/or safety of patients is in jeopardy. In the event that it is determined that the health and/or safety of patients is in jeopardy, the license may be revoked immediately with appeal rights granted after the facility ceases operation and patients are transferred to another facility. The facility may appeal within 30 days following the revocation.

B. Requests for an administrative reconsideration must be submitted in writing to HSS within 15 days of the receipt of the denial of renewal or revocation notice.

C. Requests for an administrative appeal must be submitted in writing to DHH, Office of the Secretary within 15 days of the receipt of the denial of renewal or revocation notice. Requests for administrative reconsideration do not affect the timeframes for requesting an administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

Subchapter B. Facility Operations

§8423. Operational Procedures

A. Each facility shall establish facility-specific, written policy and implement such policy in these areas:

1. procedures to ensure the health, safety, and well-being of patients;
2. procedures to ensure that patients receive optimum treatment;
3. criteria to assure access to quality care;
4. protocols to assure uniform and quality assessment, diagnosis, evaluation, and referral to the appropriate level of care;
5. procedures to assure operational capability and compliance;
6. procedures to assure that only qualified personnel are providing care within their respective scope of practice;
7. procedures to assure that the delivery of services shall be cost-effective and in conformity with current standards of practice;
8. procedures to assure that patient information is collected, maintained, and stored according to current standards of practice; and
9. standards of conduct for all personnel in the facility.

B. Continuous Quality Program (CQP). The facility shall:

1. have ongoing programs to assure that the overall function of the facility is in compliance with federal, state, and local laws, and is meeting the needs of the citizens of the area as well as attaining the goals and objectives developed from the mission statement established by the facility;
2. focus on improving patient outcomes and patient satisfaction;
3. have objective measures to allow tracking of performance over time to ensure that improvements are sustained;
4. develop and/or adopt quality indicators that are predictive of desired outcomes and can be measured, analyzed and tracked;
5. identify its own measure of performance for the activities that are identified as priorities in quality assessment and performance improvement strategy;
6. immediately correct problems that are identified through its quality assessment and improvement program that actually or potentially affect the health and safety of the patients;
7. develop and implement an annual internal evaluation procedure to collect necessary data for formulation of a plan, In addition, conduct quarterly meetings of a professional staff committee (at least 3

individuals) to select and assess continuous quality activities, to set goals for the quarter, to evaluate the activities of the previous quarter, and to immediately implement any changes that would protect the patients from potential harm or injury;

8. implement a quarterly utilization review of 5 percent of the active patient records (minimum of 10 records) by professional staff;

9. complete an annual documented review of policies, procedures, financial data, patient statistics, and survey data by the governing board/regional administrator; and

10. participate as requested with state and federal initiatives to assure quality care.

C. Operational Requirements. The facility shall:

1. be fully operational for the business of providing dialysis as indicated on the approved original application or notice of change;
2. be available as a community resource;
3. be in compliance with the facility within a facility rule, if applicable (R.S. 40:2007);
4. have active patients at the time of any survey after the initial survey;
5. utilize staff to provide services based on the needs of their current patients;
6. have required staff on duty at all times during operational hours;
7. develop, implement, and enforce policies and/or procedures that eliminate or greatly reduce the risk of patient care errors; and
8. develop procedures to communicate to staff and to respond immediately to market warnings, alerts, and recalls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8425. Facility Records

A. Record keeping shall be in accordance with accepted standards to assure the development and implementation of facility specific policies and procedures to adhere to all licensing standards. Specific facility records shall contain:

1. personnel information including:
 - a. annual health screens in accordance with CDC/OPH guidelines;
 - b. actual hours of work;
 - c. orientation/training/in-services;
 - d. disciplinary actions;
 - e. verification of professional credentials, licensing/certification and renewals; and
 - f. job descriptions/performance expectations;
2. operational information including:
 - a. organizational chart;
 - b. payment methods in accordance with the Wage and Hour Board;
 - c. proof of general and professional liability insurance in the amount of at least, \$500,000;
 - d. projected plan of operations based on the findings of the facility specific continuous improvement program; and
 - e. written agreements with other entities to assure adherence to licensing standards and continuity of care, e.g., transplant services, lab services, waste removal, hospital, etc.;

3. identification of a governing body composed of adults who have legal authority over the policies and activities of the facility as required by 42 CFR §405.2136. All private providers must comply with this requirement.

B. Required Facility Reports. The facility director shall report the following incidents either verbally or by facsimile to HSS within 24 hours of discovery:

1. fire and/or natural disasters;
2. any substantial disruption of program operation;
3. any inappropriate treatment or service resulting in death or serious injury; and
4. serious violations of laws, rules, and professional and ethical codes of conduct by facility personnel/volunteers that resulted in harm or the potential for harm to the patient(s).

C. The facility shall post a legible copy of the following documents in full view of patients, visitors, and employees:

1. patient bill of rights/responsibilities;
2. escape routes;
3. facility specific rules, responsibilities and grievance procedures;
4. current license and variances; and
5. current licensing survey findings.

D. The facility shall maintain the following operational records:

1. equipment maintenance;
2. water testing logs;
3. reprocessing logs;
4. fire and safety logs;
5. in-services/attendance records;
6. personnel records; and
7. disinfection logs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8427. Health and Safety

A. Infection Control

1. The facility shall protect staff, patients, and visitors from potential and/or actual harm from infectious disease by utilizing the following policies and procedures.

a. Development and implementation of a universal precautions program that includes education and practice.

b. Development and implementation of a infection control program to report, evaluate, and maintain documentation pertaining to the spread of infectious disease, including data collection and analysis, corrective actions, and assignment of responsibility to designated medical staff person (including "access infections").

c. The facility shall strictly adhere to all sanitation requirements.

2. The facility shall establish and maintain a clean environment by the implementation of the following housekeeping policies and procedures:

a. supplies and equipment shall be available to staff and/or patients;

b. consistent and constant monitoring and cleaning of all areas of the facility shall be practiced; and

3. the facility may contract for services necessary to maintain a clean environment.

B. Sanitation

1. Food and waste shall be stored, handled, and removed in a way that will not spread disease, cause odors, or provide a breeding place for pests.

2. If there is evidence of pests, the facility shall contract for pest control.

3. The facility shall have an adequate number of sanitized non-disposable or disposable hot/cold cups for patient use.

C. Environmental Safety

1. The entire facility (including grounds, buildings, furniture, appliances, and equipment) shall be structurally sound, in good repair, clean, and free from health and safety hazards.

2. The facility shall comply with the Americans with Disabilities Act (ADA).

3. The facility shall have adequate space, furniture, and supplies.

4. The facility shall prohibit firearms and/or other weapons.

5. Poisonous, toxic and flammable materials shall be properly labeled, stored, and used safely.

6. The facility shall take all possible precautions to protect the staff, patients and visitors from accidents or unnecessary injuries or illnesses.

D. The facility shall respond effectively during a fire or other emergency. Every facility shall:

1. have emergency evacuation procedures that include provisions for the handicapped;

2. hold simulated fire drills on each shift at least quarterly and correct identified problems;

3. be able to safely clear the building in a timely manner whenever necessary;

4. conspicuously post exit diagrams throughout the facility;

5. post emergency numbers by all phones; and

6. have adequate first aid supplies that are visible and easy to access whenever necessary.

E. The facility shall have a written facility specific disaster plan. The on-duty staff shall be able to access and implement the plan when required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8429. Physical Plant Requirements

A. All construction plans will be reviewed by the DHH Division of Architectural Services using the current edition of the *American Institute of Architect's Guidelines for Construction for Hospital and Health Care Facilities*.

B. The Office of the State Fire Marshal shall determine fire safety review requirements based upon applicable regulations.

C. Required Inspections

1. The facility shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding violations/citations. The following inspections are required:

- a. annual fire marshal inspection;

- b. annual inspection of the fire alarm system by a licensed contractor;
- c. quarterly fire alarm system test by facility staff;
- d. gas pipe pressure test once every three years by the local gas company or a licensed plumber, if applicable;
- e. annual inspection and maintenance of fire extinguishers by personnel licensed or certified to perform those duties; and
- f. regular inspections of elevators, if applicable.

2. The following documentation shall be on file in the facility:

- a. certificate of occupancy as required by the local authorities;
- b. DHH approval of the water supply/system;
- c. DHH approval of the sewage system; and
- d. documentation that any liquefied petroleum supply has been inspected and approved.

D. Exterior Space Requirements. The facility shall:

- 1. ensure that all structures on the grounds of the facility that are accessible to patients are maintained in good repair and are free from identified hazards to health or safety;
- 2. maintain the grounds of the facility in an acceptable manner and ensure that the grounds are free from any hazard to health or safety;
- 3. store garbage and rubbish securely in non-combustible, covered containers that are emptied on a regular basis;
- 4. separate trash collection receptacles and incinerators from patient activity areas and locate all containers so that they are not a nuisance to neighbors; and
- 5. store and dispose of all medical waste in accordance with local, state, and federal guidelines.

E. Interior Space Requirements

1. Bathrooms. Minimum facilities shall include:

- a. adequate operational fixtures that meet *Louisiana State Plumbing Code*. All fixtures must be functional and have the appropriate drain and drain trap to prevent sewage gas escape back into the facility;
- b. an adequate supply of hot water. Hot water temperature at the point of service to patients shall be between 105°F and 120°F;
- c. toilets with seats;
- d. an adequate supply of toilet paper, towels, and soap;
- e. doors to allow for individual privacy;
- f. external emergency release mechanism;
- g. safe and adequate supply of cold running water; and
- h. functional toilets, wash basins, and other plumbing or sanitary facilities which shall be maintained in good operating condition and kept free of any materials that might clog or otherwise impair their operation.

2. Administrative and Counseling Space

- a. Administrative office(s) for records, secretarial work and bookkeeping shall be separate and secure from patient areas.
- b. Space shall be designated to allow for private discussions and counseling sessions.

3. Doors and Windows. Outside doors, windows and other features of the structure necessary for the safety and comfort of patients shall be secured for safety within 24

hours after they are found to be in a state of disrepair. Total repair should be completed as soon as possible.

4. Storage. The facility shall:

- a. ensure that there are sufficient and appropriate storage facilities; and
- b. secure all potentially harmful materials.

F. Exits

- 1. Exit doors and routes shall be lighted and unobstructed at all times.
- 2. There shall be an illuminated "EXIT" sign over each exit. Where the exit is not visible, there shall be an illuminated "EXIT" sign with an arrow pointing the way.
- 3. Rooms for 50 or more people shall have exit doors that swing out.
- 4. No door may require a key for emergency exit.
- 5. Windows shall provide a secondary means of escape.
- 6. Every building shall have at least two exits that are well separated.
- 7. Every multiple-story building shall have at least two fire escapes (not ladders) on each story that are well separated. Fire escapes shall:
 - a. be made of non-combustible material;
 - b. have sturdy handrails or walls on both sides; and
 - c. provide a safe route to the ground.
- 8. Stairs and ramps shall be permanent and have non-slip surfaces.
- 9. Exit routes higher than 30 inches (such as stairs, ramps, balconies, landings, and porches) shall have full-length side guards.

G. Electrical Systems. All electrical equipment, wiring, switches, sockets and outlets shall be maintained in good order and safe operating condition. All rooms, corridors, stairways and exits within a facility shall be sufficiently illuminated.

- 1. The facility shall have adequate lighting to provide a safe environment and meet user needs.
- 2. Lighting shall be provided outside the building and in parking lots.
- 3. Light bulbs shall have shades, wire guards or other shields.
- 4. Emergency lighting shall illuminate EXIT routes.

H. Ventilation

- 1. The facility shall not use open flame heating equipment, floor furnaces, unvented space heaters, or portable heating units.
- 2. Occupied parts of the building shall be air conditioned and the temperature should remain between 65°F and 85°F.
- 3. The entire facility shall be adequately ventilated with fresh air. Windows used for ventilation shall be screened.
- 4. The facility shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of patients and staff.

I. Plumbing. The plumbing systems shall be designed, installed, operated and maintained in a manner that ensures an adequate and safe supply of water for all required facility operations and to facilitate the complete and safe removal of all storm water and waste water.

J. Finishes and Surfaces

1. Lead-based paint or materials containing asbestos shall not be used.

2. Floor coverings must promote cleanliness, must not present unusual problems for the handicapped and have flame-spread and smoke development ratings appropriate to the use area (e.g. patient's room versus exit corridor).

3. All variances in floors shall be easily identified by markings, etc. to prevent falls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

Subchapter C. Personnel

§8439. General Provisions

A. Administration

1. The administrative staff shall be qualified and adequate to assure adherence to all licensing standards.

2. Qualifications of all facility staff shall meet or exceed those required by federal regulations.

3. Facility compliance with licensing standards shall determine adequacy of available administrative oversight.

4. Facilities shall be organized so that administrative personnel do not perform any clinical duties and/or make clinical decisions, unless the individual is licensed or certified to make clinical decisions.

B. Referrals, Credentials, and Contract Services

1. Facility personnel shall report referral violations of laws, rules, and professional and ethical codes of conduct to HSS and to appropriate licensing boards when applicable. The facility shall maintain records and have written policies governing staff conduct and reporting procedures that comply with this requirement.

2. The facility administrator is responsible for assuring that all credentials are from accredited institutions, are legal, and have been verified to deter the fraudulent use of credentials.

3. The facility must have formal written agreements with outside professionals or other entities retained to provide contract services. Both parties shall document the annual review of each agreement.

C. Staffing Criteria. Each facility shall develop and implement staffing level criteria to assure compliance with all licensing standards and to provide quality care within the established parameters of current standards of practice.

1. Consideration for determination of adequate nursing staffing levels will include:

- a. acuity of patients;
- b. physical design of facility;
- c. equipment design and complexity;
- d. knowledge, experience, and ability of staff; and
- e. additional pertinent information as needed.

2. A registered nurse or physician shall be present during and after treatment and until the last patient has left the facility.

3. Any experience used to qualify for any position must be counted by using one year of experience equals 12 months of full-time work.

4. A person may hold more than one position within the facility if that person is qualified to function in both capacities, and the required hours for each job are separate and apart for each position.

5. Social work staffing shall be based on the staffing guidelines developed by the Council of Nephrology Social Workers (using 30 percent as a minimum) which addresses the following:

- a. treatment setting;
- b. number of patients seen or anticipated to be seen in a year;
- c. their psychological risk (acuity); and
- d. the number of mutually agreed upon social work functions, including, but not limited to:
 - i. psycho-social evaluations;
 - ii. casework counseling;
 - iii. group work;
 - iv. information and referral;
 - v. facilitating community agency referral;
 - vi. team care planning and collaboration;
 - vii. transfer planning;
 - viii. pre-admission planning;
 - ix. discharge planning
 - x. facilitating use of hospital and/or facility services
 - xi. patient/family education;
 - xii. financial assistance;
 - xiii. staff consultation; and
 - xiv. community health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8441. Training

A. Each employee shall complete at least eight hours of orientation prior to providing direct patient care/contact. The content of the basic orientation provided to all employees at the time of employment/annual review shall include:

1. policies/procedures and objectives of the facility;
2. duties and responsibilities of the employee;
3. organizational/reporting relationships;
4. ethics and confidentiality;
5. patient's rights;
6. standards of conduct required by the facility;
7. information on the disease process and expected outcomes;
8. emergency procedures including the disaster plan and evacuation procedures;
9. principals and practices of maintaining a clean, healthy and safe environment;
10. specific information as appropriate to the employee's job duties;
11. universal precautions;
12. violent behavior in the workplace;
13. abuse/neglect and exploitation;
14. overview of ESRD licensing standards; and
15. basic emergency care of ill or injured persons until trained personnel can arrive.

B. In-service training is an educational offering that shall assist the direct care/contact workers in providing current treatment modalities, and serve as refresher for subjects covered in orientation. Documentation of attendance for at least three in-services per quarter is required. Additional educational programs are encouraged.

C. Patient Care Technician (PCT) or Dialysis Technician. Training and orientation shall reflect the American Nephrology Nurses Association (ANNA) standards of clinical practice and in compliance with CMS regulations, including but not limited to:

1. anatomy and physiology of the renal system;
2. principles of water treatment;
3. dialyzer reprocessing;
4. basics of nutrition in renal failure;
5. understanding of ethical issues impacting on nephrology practice;
6. communication and interpersonal skills;
7. standard precautions, as recommended by the Center for Disease Control;
8. concepts and principles of hemodialysis;
9. arteriovenous puncture for dialysis access techniques;
10. use of heparin in dialysis procedures;
11. use of isotonic saline in dialysis;
12. maintenance of the delivery system:
 - a. integrity of extra corporeal circuit;
 - b. pressure monitor readings;
 - c. anticoagulant delivery;
 - d. blood flow rate;
 - e. alarm limits and/or conditions;
13. observation and reports of complications to the registered nurse;
14. post-treatment access care guidelines;
15. disposal of supplies in compliance with standard precautions; and
16. agency policy regarding the cleaning of equipment and treatment area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8443. Personnel Qualifications and Responsibilities

A. Chief Executive Officer or Administrator

1. Qualifications are as cited in the CFR and designated in writing by the governing body.
2. Responsibilities include:
 - a. enforcement of local, federal and state requirements;
 - b. overall management of the facility;
 - c. annual documented review and appropriate actions taken on all policies, procedures, facility rules, goals, grievances, budget, internal and external evaluations (including all survey findings);
 - d. implementation and enforcement of codes of conduct to ensure professional, ethical and legal operations; and
 - e. implementation and enforcement of facility practices that ensure that employees have the necessary administrative support to provide therapeutic milieu for patients (including adequate staff, supplies, and other support).

B. Clinical Nursing Supervisor

1. Qualifications:
 - a. currently licensed as a registered nurse in the state of Louisiana;
 - b. eighteen months or more of clinical experience as a registered nurse; and

- c. six months or more of clinical experience which must include: nursing care of a patient with permanent kidney failure or who is undergoing kidney transplantation, including training in and experience with the dialysis process.

2. Responsibilities include:

- a. supervising the clinical nursing functions of the facility;
- b. performing the liaison duties between others, including facility administrative staff, physicians and patients;
- c. supervising the training and performance of the technicians and non-medical staff in order to ensure safe care;
- d. functioning as a patient advocate; and
- e. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient receives safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46:XLVII.3901-3913.

C. Charge Nurse

1. Qualifications:

- a. currently licensed as registered nurse in the state of Louisiana;
- b. six months or more of clinical experience as a registered nurse; and
- c. three months or more of the clinical experience must include nursing care of a patient with permanent kidney failure or who is undergoing kidney transplantation, including training in and experience with the dialysis process.

2. Responsibilities include:

- a. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient will receive safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46: XLVII.3901-3913;
- b. performing initial verification and biannual validation of cannulating skills of dialysis technicians and LPN's;
- c. providing supervision and assistance as needed to RN's, LPN's and dialysis technicians; and
- d. being on site and available in the treatment area to provide patient care during all dialysis treatments.

D. Registered Nurse

1. Qualifications. Possession of a current valid license or be an RN applicant with a temporary permit to practice in Louisiana.

2. Responsibilities include:

- a. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient will receive safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46:XLVII.3901-3913;
- b. conducting admission nursing assessments with each visit prior to delegating any task other than collection of data (vital signs only);
- c. reassessing patients as needed to determine a change in the patient's status or at the patient's request;

d. participating in the team review of a patient's progress;

e. recommending changes in treatment based on the patient's current needs;

f. providing oversight and direction to dialysis technicians and LPN's; and

g. participating in continuous quality improvement activities.

3. Registered nurses may perform the duties of the nursing positions cited above for which they are qualified and designated.

E. Dietitian/Nutritionist

1. Qualifications. Possession of a currently valid license with the Louisiana Board of Dietitians/Nutritionists.

2. Responsibilities include:

a. those duties defined in R.S. 37:3081-3094;

b. providing in-service and staff training, consultation to professionals and paraprofessionals, and direct supervision as needed to improve the overall quality of care being provided;

c. conducting individual and/or group didactic and counseling interaction with patients as needed to achieve compliance with dietary restrictions;

d. documenting direct communication with other dietitians who may be involved in the patient's care, such as dietitians at the nursing home, assisted living, etc;

e. providing continuous learning opportunities for patients and/or care givers, including regionally appropriate recipes when possible; and

f. providing adequate knowledge to staff to reinforce patient education.

F. Social Worker

1. Qualifications. Currently licensed by the Louisiana State Board of Social Work Examiners as a Licensed Clinical Social Worker.

2. Responsibilities include those duties defined in R.S. 37:2701-2723 including, but not limited to:

a. Assessment, identification and evaluation of an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan.

b. Case Management function in which services, agencies, resources, or people are brought together within a planned framework of action directed toward the achievement of established goals. It may involve liaison activities and collateral contracts with other facilities.

c. Patient Education function in which information is provided to individuals and groups concerning the disease process and treatment, positive lifestyle changes, and available services and resources. Facility orientation may be included with information given regarding rules governing patient conduct and infractions that can lead to disciplinary action or discharge from the facility, availability of services, costs, and patient's rights.

d. Counseling (Individual/Group) services to provide appropriate support to the patient and/or family to assist individuals, families, or groups in achieving objectives through:

- i. exploration of a problem and its ramifications;
- ii. examination of attitudes and feelings;
- iii. consideration of alternative solutions; and
- iv. decision making and problem solving.

e. Referral, assisting patient and/or family to optimally utilize the available support systems and community resources.

f. Treatment Planning function in which all disciplines and the patient:

i. identify and rank problems needing resolution;

ii. establish agreed upon immediate objectives and long-term goals; and

iii. decide on a treatment process, frequency, and the resources to be utilized.

G Medical Director. Every facility shall have a designated medical director.

1. Qualifications

a. the medical director shall have a current, valid license to practice medicine in Louisiana;

b. be board certified in Internal Medicine or Pediatrics, or board eligible, or board certified in Nephrology;

c. have completed an accredited Nephrology training program;

d. have at least 12 months of experience or training in the care of patients at ESRD facilities; and

e. exception: in emergency situations, such as, isolated rural areas, natural disasters, or the death of the qualified director, DHH may approve the interim appointment (for a limited time period) of a licensed physician who does not meet the above criteria.

2. Responsibilities include:

a. providing services as required by the facility to meet the standards;

b. providing oversight to ensure that the facility's policies/procedures and staff conform with the current standards of medical practice;

c. performing liaison duties between others, including facility staff, physicians, and patients;

d. ensuring that each patient at the facility receives medical care and supervision appropriate to his/her needs; and

e. ensuring that each patient is under the care of a physician who sees the patient once every two weeks (staff-assisted dialysis patients) and at least every three months for home patients.

H. Patient Care Technician (PCT) or Dialysis Technician

1. Qualifications include dialysis training as specified in §8441.C.

2. Responsibilities include:

a. performing patient care duties only under the direct and on-site supervision of qualified registered nurses;

b. performing only those patient care duties that are approved by facility management and included in the policy and procedure manual; and

c. performing only those patient care duties for which they have been trained and are documented as competent to perform.

I. Reuse Technician

1. Qualifications. Basic general education (high school or equivalent), facility orientation program, and completion of education and training to include the following:

a. health and safety training, including universal precautions;

- b. principles of reprocessing, including dangers to the patient;
- c. procedures of reprocessing, including pre-cleaning, processing, storage, transporting, and delivery;
- d. maintenance and safe use of equipment, supplies, and machines;
- e. general principles of hemodialysis and in-depth information on dialyzer processing; and
- f. competency certification on a biannual basis by a designated facility employee.

2. Responsibilities. The reuse technician is responsible for the transport, cleaning, processing, and storage of dialyzers to limit the possibility of cross contamination, and to avoid improper care of multiple use dialyzers.

3. Any technician or professional staff who performs reprocessing shall have documented training in the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

Subchapter D. Patient Care

§8455. Patient's Rights and Responsibilities

A. Facilities are required to develop, post, and implement rules and policies that protect the rights of patients and encourage patient responsibility.

1. A committee (staff, patients, and/or family) should develop the rules of the specific facility that relate to patient comfort, safety, and the consequences of failing to abide by the rules.

2. Facility staff and patients must follow the rules, and if the rule is no longer applicable, then a committee review should eliminate or alter the rule and notify all concerned.

B. Patient's Rights. Each facility shall develop and implement policies that protect the rights of their patients including, but not limited to, the right to:

- 1. be fully informed of rights, responsibilities and all rules governing conduct related to patient care and services;
- 2. be fully educated and supported concerning their illness;
- 3. adequate, safe and efficient dialysis treatment;
- 4. protection from unsafe and/or unskilled care by any person associated with the facility;
- 5. protection from unqualified persons providing services under the auspices of treatment;
- 6. consideration and respect toward the patient, family and visitors;
- 7. timely resolution of problems or grievances without threat or fear of staff intimidation or retaliation;
- 8. protection of personal property approved for use by the facility; and
- 9. protection from retaliation for the exercise of individual rights.

C. Patient Responsibilities. The patient is responsible for cooperating and participating to the best of their ability in the following activities:

- 1. planning and implementing treatment;
- 2. dietary restrictions;
- 3. scheduling of treatments;
- 4. providing information to assist those providing care;

5. protecting the comfort, health and safety of all patients;

6. resolution of problems as they arise; and

7. reporting (to appropriate authorities) situations that endanger themselves or others.

D. Grievance Procedure. The facility must have a grievance process and must indicate who the patient can contact to express a grievance. Records of all grievances, steps taken to investigate them, and results of interventions must be available to surveyors upon request. It is recommended that the facility appoint a grievance committee with patient representation to resolve major or serious grievances.

E. Abuse, Neglect, and Exploitation

1. All allegations of patient abuse, neglect, and exploitation shall be reported either verbally or by facsimile within 24 hours and confirmed in writing to HSS within seven days.

2. The facility is responsible for taking necessary action to protect patients from an employee accused of abuse, neglect, or exploitation, for referring any licensed personnel to their respective professional boards, and/or contacting local authorities for investigation when indicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8457. Treatment Services

A. The following services shall be provided by a facility.

1. Hemodialysis Ca method of dialysis in which blood from a patient's body is circulated through an external device or machine and then returned to the patient's bloodstream.

2. Peritoneal Dialysis Ca procedure that introduces dialysate into the abdominal cavity to remove waste products through the peritoneum (a membrane which surrounds the intestines and other organs in the abdominal cavity).

3. Home Training C home visits, teaching, and professional guidance to teach patients to provide self-dialysis.

4. Home Support C provision of professional support to assist the patient who is performing self-dialysis.

B. Dialyzer Reprocessing. Reuse shall meet the requirements of 42 CFR §405.2150. Additionally, the facility shall:

1. develop, implement, and enforce procedures that eliminate or reduce the risk of patient care errors, including but not limited to, a patient receiving another patient's dialyzer, or a dialyzer that has failed performance checks;

2. develop procedures to communicate with staff and to respond immediately to market warnings, alerts, and recalls;

3. develop and utilize education programs that meet the needs of the patient and/or family members to make informed reuse decisions; and

4. be responsible for all facets of reprocessing, even if the facility participates in a centralized reprocessing program.

C. Water treatment shall be in accordance with the *American National Standard, Hemodialysis Systems* published by the Association for the Advancement of

Medical Instrumentation (AAMI Standards) and adopted by reference 42 CFR. § 405.2140.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8459. Treatment Requirements

A. Admission

1. Each facility shall develop and implement written criteria to apply when any patient is referred for dialysis treatment or seeks admission, to include:

- a. payment guidelines, and alternate resources;
 - b. exceptions to apply when the patient would have to travel great distances, or suffer undue hardship to be treated at another facility; and
 - c. consideration of the patient's health and welfare.
2. Each facility shall develop a process that includes:
- a. perpetual logging of applicants to assure that all patients are treated equally and offered equal access;
 - b. referral to appropriate facilities or outside resources;
 - c. contracts with those patients who have a history of problems at other facilities; and
 - d. professional interaction with other facilities when a patient has financial or behavior problems that cannot be resolved.

B. Discharge/Transfer

1. Each facility shall develop and implement written criteria to apply when a patient is discharged without consent to include:

- a. reason for discharge (such as, non-compliance or illegal behavior);
- b. progressive procedures to assist the patient in making improvements;
- c. assistance to aid the patient in finding a new facility; and
- e. evaluation of each situation to improve outcomes.

2. A written, patient specific discharge process plan shall be accessible that provides reasonable protection and continuity of services.

C. Patient Care Miscellaneous

1. Each patient who does not meet recommended levels of adequacy of treatment shall be considered an unstable patient, with monthly care plan revisions to attain the desired outcome.

2. Patients must be informed whenever there is an error or incident that exposes them to an infectious illness or the potential for death or serious illness.

3. Facility staff should inform patients of current changes in the dialysis field when those changes could positively or negatively affect the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

§8461. Patient Records

A. The facility is required to maintain a clinical record according to current professional standards for each patient.

1. This record shall:

- a. contain all pertinent past and current medical, psychological, social and other therapeutic information, including the treatment plan;
- b. be protected from unauthorized persons, loss, and destruction; and
- c. be a central location for all pertinent patient information and be easily accessible to staff providing care.

2. Patient records can be copied and/or transferred from one facility to another provided that the patient signs the authorization for transfer of the records and provided that confidentiality of information is strictly enforced.

3. Patient records shall be maintained at the facility where the patient is currently active and for six months after discharge. Records may then be transferred to a centralized location for maintenance in accordance with standard practice and state and federal laws.

4. Confidentiality. Records shall:

- a. be inaccessible to anyone not trained in confidentiality, unless they are granted access by legal authority such as surveyors, investigators, etc.; and
- b. not be shared with any other entity unless approved in writing by the patient, except in medical emergencies.

5. Record Keeping Responsibility. A person who meets or exceeds the federal requirements, shall be designated as responsible for the patient records.

6. Contents. Patient records shall accurately document all treatment provided and the patient's response in accordance with professional standards of practice. The minimum requirements are as follows:

- a. admission and referral information, including the plan/prescription for treatment;
- b. patient information/data - name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;
- c. medical limitations, such as major illnesses and allergies;
- d. physician's orders;
- e. psycho-social history/evaluation; and
- f. treatment plan. The plan is a written list of the patient's problems and needs based on admission information and updated as indicated by progress or lack of progress. Additionally, the plan shall:
 - i. contain long and short term goals;
 - ii. be reviewed and revised as required, or more frequently as indicated by patient needs;
 - iii. contain patient-specific, measurable goals that are clearly stated in behavioral terms;
 - iv. contain realistic and specific expected achievement dates;
 - v. indicate how the facility will provide strategies/activities to help the patient achieve the goals;

- vi. be followed consistently by all staff members; and
- vii. contain complete, pertinent information related to the mental, physical, and social needs of the patient.
- g. diagnostic laboratory and other pertinent information, when indicated;
- h. progress notes by all disciplines; and
- i. other pertinent information related to the individual patient as appropriate.

7. Computer data storage of pertinent medical information must:

- a. meet the above criteria;
- b. be easily retrievable and accessible when the patient is receiving dialysis; and
- c. be utilized by care givers during dialysis treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, May 28, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Minimum Licensing Standards
End Stage Renal Disease Treatment Facilities**

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

It is anticipated that \$2,000 (\$1,000 SGF and \$1,000 FED) will be expended in SFY 2001-02 for the states administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that implementation of this proposed rule will increase self generated funds by approximately \$87,750 as a result of the collection of annual fees from the licensing of end stage renal disease treatment facilities. Additionally, it is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$131,626 for SFY 2002-03, \$131,626 for SFY 2003-04, and \$131,626 for SFY 2004-05.

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

It is anticipated that the implementation of this proposed rule will increase self generated funds and federal revenue collections by approximately \$219,376 for SFY 2002-03,

\$219,376 for SFY 2003-04, and \$219,376 for SFY 2004-05 from the licensing of approximately 130 end stage renal disease treatment facilities at a cost of approximately \$675 for each facility. The funds generated from licensing activities will be used for administrative expenses by the Department of Health and Hospitals, Health Standards Section. This proposed rule will protect the health and well being of patients of end stage renal disease treatment facilities by ensuring proper licensing standards for participating providers of these medically necessary services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0204#060

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Regulation 70C Replacement of Life
Insurance and Annuities
(LAC 37:XIII.8903, 8907, 8909, and 8917)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice that it intends to amend its existing Regulation 70 relating to the replacement of life insurance and annuities. This intended action complies with the statutory law administered by the Department of Insurance.

The proposed amendments are needed to facilitate certain changes deemed necessary to allow for insurance transactions completed by electronic means. The proposed amendments affect the following sections: §§8903, 8907, 8909 and 8917.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 89. Regulation 70C Replacement of Life
Insurance and Annuities**

§8903. Definitions

Electronic Means relating to sales presentations conducted by a producer utilizing technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities where all signatures are obtained via electronic signature technology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1300 (June 2000), amended LR 28:

§8907. Duties of Producers

A.1. - 2. ...

3. Notwithstanding Paragraph A.2 above, when the sales presentation is conducted by electronic means and all signatures are obtained via electronic signature technology, the meaning of "at the time of taking the application" shall be extended to allow for the Producer's submission of

electronic information to the company. The requirements of Paragraph A.2 are deemed met when a copy of the required replacement notice electronically signed at the presentation is mailed to the client within two business days following submission of the case to the company. In no event shall the time for mailing the notice exceed five business days from the date the client signed the application.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1301 (June 2000), amended LR 28:

§8909. Duties of Insurers that Use Producers

A. - C.2.b. ...

c. mail the client a hard copy of the required replacement notice within two business days following a producer's submission of case conducted by electronic means. In order to show compliance with §8907.A.2 and 3, the mailing must occur no later than five business days from the date of client's signing the application.

C.3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1302 (June 2000), amended LR 28:

§8917. Violations and Penalties

A. Any failure to comply with this Regulation shall be considered a violation of R.S. 22:1214. Examples of violations include:

1. - 5. ...

6. the company's failure to mail the client a hard copy of the required replacement notice within two business days following the submission of a case conducted by electronic means. All such mailings must occur no later than five business days from the date of client's signing the application.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1304 (June 2000), amended LR 28:

Family Impact Statement

1. Describe the effect of the proposed rule on the stability of the family. The proposed amendments to Regulation 70 should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed rule on the authority and rights of parents regarding the education and supervision of their children. The proposed amendments to Regulation 70 should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the effect of the proposed rule on the functioning of the family. The proposed amendments to Regulation 70 should have no impact on the functioning of the family.

4. Describe the effect of the proposed rule on family earnings and budget. The proposed amendments to Regulation 70 should have no impact on the functioning of the family.

5. Describe the effect of the proposed rule on the behavior and responsibility of children. The proposed amendments to Regulation 70 should have no impact on the behavior and responsibility of children.

6. Describe the effect of the proposed rule on the ability of the family or a local government to perform the function as contained in the rule. The proposed amendments to Regulation 70 should have no impact on the ability of the family or a local government to perform the function as contained in the rule.

On May 28, 2002, at 10 a.m., the Department of Insurance will hold a public hearing in the Plaza Hearing Room of the Insurance Building located at 950 N. 5th Street, Baton Rouge, Louisiana, 70804 to discuss the proposed amendments.

Persons interested in obtaining copies of the Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m., May 29, 2002.

J. Robert Wooley
Acting Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 70C Replacement of Life Insurance and Annuities

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

No implementation costs or savings to state or local governmental units are anticipated as a result of adoption of the proposed amendments to Regulation 70.

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

Adoption of the proposed amendments to Regulation 70 is not expected to have any impact upon revenue collections by state or local governmental units. No new responsibilities or functions will be required of DOI as a result of adoption of Regulation 70. DOI is already performing all actions set forth in the proposed regulation; therefore, no new or additional revenue will result from adoption of this proposed regulation.

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

There should be no costs or economic benefits to insurance companies or insurance consumers as a result of the adoption of the proposed amendments to Regulation 70.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments to Regulation 70 are not expected to have any impact on competition and employment.

Chad M. Brown	Robert E. Hosse
Deputy Commissioner	General Government Section Director
Management and Finance	Legislative Fiscal Office
0204#079	

NOTICE OF INTENT

Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

Drug and Alcohol Policy (LAC 46:LXXVI.Chapter 2)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots hereby gives Notice of Intent to promulgate rules regarding its Drug and Alcohol Policy.

In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any possible imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the Board of Examiners proposes to adopt the following actions pertaining to the rules and regulations of the Board.

The text of this proposed rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments no later than 4:30 p.m. on May 20, 2002 to Robert A. Barnett, Executive Director, 3900 River Road, Suite 5, Jefferson, LA 70121.

Robert A. Barnett
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Drug and Alcohol Policy

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

There is no cost to the Board of New Orleans and Baton Rouge Steamship Pilot commissioners for the Mississippi River, the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, nor the State of Louisiana for this rule change and implementation. All expenses, if any, are paid by the Pilot Association, as per law. All funds paid by the NOBRA Association are generated by the pilot fees paid by shipping concerns and industry members.

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

There should be no effect on revenue collections of state or local governmental units.

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

This rule change may result in an increase in costs for those pilots who must retain an attorney for representation in a disciplinary hearing. Also, pilots who are required to undergo evaluation and/or treatment for drug and/or alcohol use shall do so at his/her own expense.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Any NOBRA pilot who presents a positive drug or alcohol test or drug screen shall be subject to disciplinary action by the Board of Review and/or Board of Examiners, including revocation or suspension of the pilot commission by the Office

of the Governor. Penalties may also include fines, reprimands and/or treatment/rehabilitation.

Robert A. Barnett
Executive Director
0204#048

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Board of Parole

Public Hearings/Risk Review Panel Applicants
(LAC 22:XI.511)

The Louisiana Board of Parole, in accordance with R.S. 49:950 et seq., hereby gives notice of its intent to amend LAC 22:XI.511, Public Hearings. This Rule is being amended to facilitate the handling of favorable recommendations from the Louisiana Risk Review Panel.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Board of Parole

Chapter 5. Meetings and Hearings of the Board of Parole

§511. Public Hearings

A. - F. ...

G. When the Louisiana Board of Parole receives a favorable recommendation from any of the three existing Louisiana Risk Review Panels (South, Central and/or North Louisiana Risk Review Panel), or the Louisiana Board of Pardons regarding a Risk Review Panel recommendation previously submitted to the Board of Pardons, said recommendation shall be accepted and scheduled for a public hearing as soon as possible. A Risk Review Panel recommendation may be set for a hearing at a time and date designated by the vice-chairman, at his/her sole discretion, notwithstanding any rule contained herein to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953.A.1.a.viii and R.S. 49:972, the Louisiana Board of Parole hereby provides the Family Impact Statement.

Adoption of this amendment to the rules of the Louisiana Board of Parole regarding the handling of applications via the Louisiana Risk Review Panel process will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit written comments to Fred Y. Clark, Chairman of the Board of Parole, c/o Department of Public Safety and Corrections, 504 Mayflower Street,

Baton Rouge, LA 70802, or by facsimile to (225) 342-3701. All comments must be submitted by 4:30 p.m., May 20, 2002.

Fred Y. Clark
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Public Hearings Risk Review Panel
Applicants**

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

There are no estimated implementation costs or savings. Applications for parole from the Risk Review Panel will be handled in the normal manner. The rule merely clarifies the authority of the Board to set an application for hearing without delay.

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

There are no estimated effects on revenue collections for the above stated reasons.

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

The rule does not impose any additional costs on an applicant for parole. Applications are submitted voluntarily, and the applicant must comply with current rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment.

Robert B. Barbor
Executive Counsel
0204#073

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Code of Conduct of Licensees (LAC 42:XI.2417)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:XI.2417 in accordance with R.S. 27:15 and 24 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2417. Code of Conduct of Licensees

A. - B.5. ...

6. No licensee shall permit the operation of any video draw poker device at any time the licensed establishment is not open for business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Gaming Control Board, LR 27:59 (January 2001), amended LR 28:

Family Impact Statement

It is accordingly concluded that adopting LAC 42:XI.2417.B.6 would appear to have a positive yet inestimable impact on the following:

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

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 342-2465, and may submit comments relative to these proposed Rules, through May 10, 2002, to 339 Florida Street, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Code of Conduct of Licensees**

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

It is anticipated that there will be no direct implementation costs or savings to state or local government units.

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

No effect on revenue collections is anticipated.

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

No costs to directly affected persons are expected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is estimated.

Hillary J. Crain
Chairman
0204#045

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Compulsive and Problem Gambling
(LAC 42:III.118, Chapter 3, VII.2933,
Chapter 37, IX.2939, Chapter 37,
XI.2407, XIII.2933, and Chapter 37)

The Louisiana Gaming Control Board hereby gives notice that it intends to adopt LAC 42:III.301 et seq.; repeal LAC 42:III.118, VII.2933, VII.Chapter 37, IX.2939, IX.Chapter 37, XIII.2933, XIII.Chapter 37; and amend XI.2407 in accordance with. R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42
LOUISIANA GAMING

Part III. Gaming Control Board

Chapter 1. General Provisions

§118. Programs to Address Problem Gambling

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2256 (November 1999), repealed LR 28:

Chapter 3. Compulsive and Problem Gambling

§301. Problem Gambling Programs

A. As used in this Section *licensee* shall mean all persons licensed or otherwise authorized to conduct gaming operations pursuant to the provisions of Chapters 4, 5, and 7 of the Louisiana Gaming Control Law, R.S. 27:1 et seq., including the Casino Operator and Casino Manager, but not including persons licensed pursuant to Chapter 6 of the Louisiana Gaming Control Law.

B. The Casino Operator or Casino Manager and each licensee shall post or provide written materials concerning the nature and symptoms of problem gambling in conspicuous places within the gaming establishment in or near gaming areas and areas where cash or credit is made available to patrons, including cash dispensing machines.

C. The Casino Operator or Casino Manager and each licensee shall post one or more signs, as approved by the Division, at points of entry to casino gaming establishments to inform customers of the toll free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll free number shall be provided by the division.

D. Failure by the Casino Operator or Casino Manager or a licensee to comply with the provisions of Subsections B or C above shall constitute violations of this Section. The penalty for violation of Subsection B or C shall be \$1,000 per day or administrative action including but not limited to suspension or revocation.

E. 1. The Casino Operator or Casino Manager and all licensees shall develop a comprehensive program for its property or properties, that address, at a minimum, the areas of concern described in R.S. 27:27.1.C which are designed to:

a. provide procedures designed to prevent employees from willfully permitting a person identified on a self-exclusion list from engaging in gaming activities at the licensed establishment or facility;

b. provide procedures to offer employee assistance programs or equivalent coverage. The procedures shall be designed to provide confidential assessment and treatment referral for gaming employees and, if covered, their dependents who may have a gambling problem;

c. provide procedures for the development of programs to address issues of underage gambling and unattended minors at gaming facilities;

d. provide procedures for the training of all employees that interact with gaming patrons in gaming areas to report suspected problem gamblers to supervisors who shall be trained as provided in this Paragraph. The training shall, at a minimum, consist of information concerning the nature and symptoms of compulsive and problem gambling behavior and assisting patrons in obtaining information

about compulsive and problem gambling and available options for seeking assistance with such behavior;

e. provide procedures designed to prevent serving alcohol to intoxicated gaming patrons consistent with the provisions of R.S. 26:931 et seq.;

f. provide procedures for removing self-excluded persons from the licensed establishment or facility, including, if necessary, procedures that include obtaining the assistance of the division or local law enforcement;

g. provide procedures preventing any person identified on the self-exclusion list from receiving any advertisement, promotion, or other targeted mailing after ninety days of receiving notice from the board that the person has been placed on the self-exclusion list;

h. provide procedures for the distribution or posting within the gaming establishment of information that promotes public awareness about problem gambling and provides information on available services and resources to those who have a gambling problem;

i. provide procedures for the distribution of responsible gaming materials to employees;

j. provide procedures for the posting of local curfews or laws and prohibitions, if any, regarding underage gambling and unattended minors;

k. provide procedures to prevent any person placed on the self-exclusion list from having access to credit or from receiving complimentary services, check cashing services, and other club benefits;

l. provide procedures designed to prevent persons from gaming after having been determined to be intoxicated for the purposes of R.S. 27:27.1.C.(5).

2. The Casino Operator or Casino Manager and each licensee shall designate personnel responsible for implementing and monitoring the program.

3. In addition to the areas of concern described in R.S. 27:27.1.C, the comprehensive program shall also include a program that allows patrons to self-limit their access to functions and amenities of the gaming establishment, including but not limited to, the issuance of credit, check cashing or direct mail marketing. The program shall contain, at a minimum, the following:

a. the development of written materials, including forms used by the division, for dissemination to patrons explaining the program;

b. the development of procedures and written material, including forms used by the division, for dissemination to patrons explaining the excluded persons provisions of R.S. 27:1 et seq. and the administrative rules of the board;

c. the development of procedures and written forms allowing patrons to participate in the program;

d. standards and procedures that allow a patron to be removed from the licensee's direct mailing and other direct marketing regarding gaming opportunities at the licensee's location.

F. The Casino Operator or Casino Manager and each licensee shall submit the comprehensive program to the board for approval within one hundred twenty days from the date this rule becomes effective as required by R.S. 27:27.1.C.

G. Upon approval, the Casino Operator, Casino Manager and all casino gaming licensees shall comply with their

respective comprehensive compulsive and problem gambling programs submitted to the board.

H. Sanctions

1. Failure by any licensee, the Casino Operator or Casino Manager to comply with LAC 42:III.301.F shall constitute a violation. The penalty for violation of LAC 42:III.301.F shall be \$1,000 per day or administrative action including but not limited to suspension or revocation.

2. Failure by any licensee, the Casino Operator or Casino Manager to comply with any provision of the programs approved by the board shall constitute a violation of LAC 42:III.301.G. The penalty shall be \$5000 for the first offense, \$10,000 for the second offense and \$20,000 for the third offense. The penalty for fourth and subsequent offenses shall be \$20,000 or administrative action including but not limited to suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

§302. Problem Gambling Programs; Video Draw

Poker

A. As used in this Section, licensee shall mean all persons licensed or otherwise authorized to conduct gaming operations pursuant to the provisions of the Video Draw Poker Devices Control Law as provided in Chapter 6 of the Louisiana Gaming Control Law.

B. Each licensee shall post or provide written materials concerning the nature and symptoms of problem gambling in conspicuous places in or near gaming areas and areas where cash or credit is made available to patrons, including cash dispensing machines.

C. Each licensee shall post one or more signs at points of entry to the gaming area to inform customers of the toll free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll free number shall be provided by the division.

D. Licensed video draw poker establishments shall comply with procedures and training requirements developed by the division and approved by the board.

E. Failure by a licensee to comply with the provisions of Subsections B, C or D above shall constitute violations of this Section. The penalty for violation of this Section shall be \$250 per day for the first offense, \$500 per day for the second offense and \$1000 per day for the third offense. The penalty for fourth and subsequent offenses shall be \$1000 per day or administrative action including but not limited to suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

§303. Persons Required to be Excluded

A. Pursuant to R.S. 27:27.2, the Louisiana Gaming Control Board hereby provides for the establishment of a list of persons who are to be excluded or ejected from any room, premises, or designated gaming area of an establishment where gaming is conducted pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law, R.S. 27:1 et seq.

B. Definitions. The following words and terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise.

Board Exclusion List A list of names of persons who, pursuant to R.S. 27:27.2, are required to be excluded or ejected from casino gaming establishments.

Board Excluded Person Any person who has been placed on the board exclusion list by preliminary or final order of the board or division where applicable, and who is required to be excluded or ejected from a casino gaming establishment pursuant to the Louisiana Gaming Control Law.

Candidate Any person whose name is included in a petition to place such person on the board exclusion list pursuant to the Louisiana Gaming Control Law.

Career or Professional Offender Any person who, in an occupational manner or context, engages in methods and activities that are deemed criminal violations or contrary to the public policy of this state for the purpose of economic gain.

Casino Gaming Establishment Any room, premises, or designated gaming area of any establishment where gaming is conducted pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law.

Cheat Any person whose act or acts in any jurisdiction would constitute any offense under R.S. 14:67.18.

Occupational Manner or Context The systematic planning, administration, management, or execution of an activity for financial gain.

C. Criteria for Exclusion

1. The board exclusion list may include any person who meets any of the following criteria:

a. a career or professional offender whose presence in a casino gaming establishment would be adverse to the interests of the state of Louisiana or to authorized gaming therein;

b. an associate of a career or professional offender whose association is such that his or her presence in a casino gaming establishment would be adverse to the interests of the state of Louisiana or to authorized gaming therein;

c. a person who has been convicted of a gaming or gambling crime or a crime related to the integrity of gaming operations;

d. a person who has performed any act or has a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, but not limited to, being identified with criminal activities in published reports of various federal and state legislative and executive bodies that have inquired into criminal activities. Such bodies shall include, but not be limited to, the following:

i. California Crime Commission;

ii. Chicago Crime Commission;

iii. McClellan Committee (Senate Subcommittee on Investigation);

iv. New York Waterfront Commission;

v. Pennsylvania Crime Commission Report;

vi. Senate Permanent Subcommittee on Investigations;

vii. State of Colorado Organized Crime Strike Force; or

viii. President's Commission on Organized Crime;

e. has been named or is currently on any valid exclusion list of any other jurisdiction;

f. is a person whose presence in a casino gaming establishment would be adverse to the state of Louisiana or authorized gaming therein, including, but not limited to:

- i. cheats;
- ii. persons whose gaming privileges, permits, licenses, or other approvals have been suspended, revoked or denied;
- iii. persons who pose a threat to the safety of the patrons or employees of the Casino Operator or Casino Manager or any casino gaming licensee;
- iv. persons with a documented history of conduct involving the disruption of the gaming operations in any jurisdiction;
- v. persons subject to an order of a Louisiana court excluding such persons from any casino gaming establishments; or
- vi. persons with pending charges for a gaming or gambling crime or a crime related to the integrity of gaming operations;

g. for purposes of Subsection C.1 above:

i. a person's presence may be considered "adverse to the interest of the state of Louisiana or to authorized gaming therein" if known attributes of such person's character and background:

(a). are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of licensed gaming;

(b). could reasonably be expected to impair the public perception of, and confidence in, the strict regulation of gaming activities; or

(c). would create or enhance a risk or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto;

ii. a finding that a person's presence is "adverse to the interest of the state of Louisiana or to authorized gaming therein" may be based upon, but not limited to, the following:

(a). the nature and notoriety of the attributes of character or background of the person;

(b). the history and nature of the involvement of the person with authorized gaming in Louisiana or any other jurisdiction, or with any particular licensee or licensees or any related company thereof;

(c). the nature and frequency of any contacts or associations of the person with any licensee or licensees, or with any employees or agents thereof; or

(d). any other factor reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the gaming industry, and its employees;

iii. race, color, creed, national origin or ancestry, sex or disability as defined in R.S. 51:2234.(11), shall not be a reason for placing the name of any person upon such list.

2. Duties of the Division

a. The division shall, on its own initiative, or upon recommendation by the board, investigate any individual who would appear to be an appropriate candidate for placement on the board exclusion list.

b. If, upon completion of an investigation, the division determines that an individual should be placed on the board exclusion list, the division shall make a recommendation for exclusion to the board, identifying the candidate and setting forth the basis for which the division believes the candidate satisfies the criteria for exclusion established by the Louisiana Gaming Control Law.

3. Notice

a. Upon a determination by the board that one or more of the criteria for being named on the list are satisfied, such person shall be placed on the board exclusion list. The board or division shall serve notice of exclusion in the matter prescribed in R.S. 27:27.2.C. The notice shall:

i. identify the excluded person by name, including known aliases, and last known address;

ii. specify the nature and scope of the circumstances or reasons for such person's exclusion;

iii. inform the excluded person of his right to request a hearing for review and/or removal;

iv. inform the excluded person that the failure to timely request a hearing shall result in the decision's becoming final.

4. Contents of the Board Exclusion List

a. The following information shall be provided for each board excluded person:

i. the full name of the person and any known aliases the person is believed to have used;

ii. a description of the person's physical appearance, including height, weight, build, color of hair and eyes, and any other physical or distinguishing characteristics that may assist in identifying the person;

iii. the date of birth of the person;

iv. the date of the notice mandating exclusion;

v. the driver's license number or state identification number of the person;

vi. a photograph of the person, if available and the date taken;

vii. the person's occupation and his current home and business address; and

viii. social security number, if available;

ix. the reason for exclusion.

5. Maintenance and Distribution of the List

a. The board shall maintain a list of persons to be excluded or ejected from all casino gaming establishments.

b. The list shall be open to public inspection except information pertaining to the date of birth, driver's license number and current home and business address of the board excluded person.

c. The list shall be distributed by the division to the Casino Operator or Casino Manager and all casino gaming licensees.

d. No casino gaming licensee, the Casino Operator or Casino Manager or any employee, or agent thereof shall disclose the date of birth or current home or business address of a board excluded person to anyone other than employees or agents of casino gaming licensees whose duties and functions require access to such information.

6. Duties of the Casino Operator or Casino Manager and Casino Gaming Licensees

a. The Casino Operator or Casino Manager, casino gaming licensees and their agents or employees shall exclude or eject the following persons from the casino gaming establishment:

i. any board excluded person; or

ii. any person known to the Casino Operator or Casino Manager or any casino gaming licensee to satisfy the criteria for exclusion in the Louisiana Gaming Control Law.

b. If a board excluded person enters, attempts to enter, or is in the casino gaming establishment and is discovered by the Casino Operator or Casino Manager or any casino gaming licensee, the Casino Operator or Casino Manager or casino gaming licensee shall immediately notify the division of such fact and, unless otherwise directed by the division, immediately eject such excluded person from the casino gaming establishment.

c. Upon discovery of a board excluded person in the casino gaming establishment, both the security and surveillance departments of the Casino Operator, Casino Manager and casino gaming licensees shall initiate a joint investigation, unless otherwise directed by the division, to determine:

i. responsibility of employees of the casino gaming establishment for allowing a board excluded person to gain access to the casino gaming establishment; and

ii. the net amount of winnings and/or losses attributable to the board excluded person.

d. The Casino Operator, Casino Manager, and each casino gaming licensee shall take reasonable steps to ensure that no winnings or losses arising as a result of prohibited casino gaming activity are paid or recovered by a board excluded person.

e. It shall be the continuing duty of the Casino Operator, Casino Manager, and each casino gaming licensee to inform the board and division in writing of the names of persons it knows or has reason to know are appropriate for placement on the board exclusion list.

7. Sanctions

a. Any casino gaming licensee, Casino Operator or Casino Manager who willfully fails to exclude a board excluded person from the casino gaming establishment shall be in violation of these rules and may be subject to administrative action pursuant to R.S. 27:27.2.F and this Section.

b. The penalty for violation of LAC 42:III.303.C.7.a shall be \$25,000 or administrative action including but not limited to suspension or revocation.

8. Removal from the Board Exclusion List

a. Hearing. Any person who desires to have his name removed from the board exclusion list shall submit a written request to the board requesting a hearing before a hearing officer.

b. Absent. A change in circumstances that would have affected the board exclusion No person shall request a hearing to be removed from the board exclusion list for a period of five years from the date of the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

§304. Self-Exclusion

A. Pursuant to R.S. 27:27.1, the Louisiana Gaming Control Board hereby provides for the establishment of a list

of persons who, at his or her request, are to be excluded or ejected from all casino gaming establishments licensed or operating pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law, R.S. 27:1 et seq.

B. Definitions

1. The following words and terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise.

Casino Gaming Establishment Any room, premises, or designated gaming area of any establishment where gaming is conducted pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law.

Self-Excluded Person Any person whose name is included, at his or her request, on the self-exclusion list maintained by the board.

Self-Exclusion List A list of names of persons who have voluntarily agreed to be excluded from all gaming activities and to be prohibited from collecting any winnings or recovering any losses at all licensed casino gaming establishments.

C. Request for Self-Exclusion

1. Any person may have his or her name placed on the self-exclusion list by submitting a request for self-exclusion in the form and manner required by this Section.

2. Any person requesting placement on the self-exclusion list shall submit, in person, a completed request for self-exclusion as required in Paragraph C.4 below. The request shall be delivered to an Office of State Police, Casino Gaming Division. Any person submitting a self-exclusion request shall be required to present valid identification credentials. Any person requesting self-exclusion pursuant to this Section shall be required to have his or her photograph taken by a division agent upon submission of the request.

3. No person placed on the self-exclusion list may request removal for a period of five years from the date the person is placed on the self-exclusion list.

4. A request for self-exclusion shall be in a form prescribed by the board. Such form shall include:

a. identifying information concerning the person submitting the request for self-exclusion, as follows:

i. name, including any known aliases or nicknames;

ii. date of birth, driver's license or state identification number, if available;

iii. current home and business address;

iv. telephone number of current residence;

v. Social Security number, which information is voluntarily provided in accordance with Section 7 of the Privacy Act, 5 U.S.C. § 552(a); and

vi. a physical description of the person, including height, weight, gender, hair color, eye color, and any other physical or distinguishing characteristics that may assist in the identification of the person;

vii. the date of exclusion;

b. a waiver and release which shall release, forever discharge, indemnify and hold harmless the state of Louisiana, the Louisiana Gaming Control Board ("Board"), the Louisiana Department of Public Safety and Corrections, Office of State Police ("State Police"), the Department of Justice, Office of the Attorney General ("Attorney General's Office") and their members, agents, and employees, from

any liability to the person requesting self-exclusion and his or her heirs, administrators, executors and assigns for any harm, monetary or otherwise, which may arise out of or by reason of any act or omission relating to the request for self-exclusion, request for removal from the self-exclusion list, or removal from the self-exclusion list, including:

i. processing or enforcement of the request for self-exclusion, request for removal or removal from the self-exclusion list;

ii. the failure of the Casino Operator or Casino Manager or a casino gaming licensee to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person;

iii. permitting a self-excluded person to engage in gaming activity in a licensed casino gaming establishment while on the list of self-excluded persons; and

iv. disclosure of the information contained in the self-exclusion request or list, except for a willful unlawful disclosure of such information;

c. the following statement signed by the person submitting the request for self-exclusion:

"I understand and read the English language or have had an interpreter read and explain this form. I am voluntarily requesting exclusion from all gaming activities at all Louisiana casino gaming establishments because I am a compulsive and/or problem gambler. I certify that the information that I have provided above is true and accurate, and that I have read, understand, and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature below authorizes the Board or the State Police to direct all Louisiana casino gaming licensees, including the Casino Operator and Casino Manager, to restrict my gaming activities and access to casino gaming establishments for a minimum period of five years from the date of exclusion. During such period of time, I will not attempt to enter any casino gaming establishment. I further understand that my name will remain on the self-exclusion list until 1) I submit a written request to the board to terminate my self-exclusion; 2) a hearing is held; and 3) there is a written decision of the Board determining that there is no longer a basis for me to be maintained on the list. I am aware that I cannot request removal from the list before five years have elapsed from the date of exclusion. I am aware and agree that during any period of self-exclusion, I shall not collect in any manner or proceeding any winnings or recover any losses resulting from any gaming activity at any casino gaming establishment and that any money or thing of value obtained by me from, or owed to me by, the Casino Operator, Casino Manager, or a casino gaming licensee as a result of wagers made by me while on the self-exclusion list shall be withheld and remitted to the state of Louisiana."

d. the type of identification credentials examined containing the signature of the person requesting self-exclusion, and whether the credentials included a photograph of the person; and

e. the signature of a board or division member, agent, or employee authorized to accept such request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on his or her identification credentials and that any photograph or physical description of the person appears to agree with his or her actual appearance.

5. Upon receipt and acceptance of the request for self-exclusion and completion and submission of all required information and documentation the requesting party shall be placed on the self-exclusion list by the division.

D. Self-Exclusion List

1. The board shall maintain a list of persons who, at his or her request, are excluded and are to be ejected from all casino gaming establishments.

2. The list shall not be open to public inspection.

3. The list shall be distributed by the division to the Casino Operator or Casino Manager and each casino gaming licensee who shall acknowledge receipt of the list in writing. The division shall notify the Casino Operator, Casino Manager and all casino gaming licensees of the addition of new names and removal of names from the self-exclusion list within two business days of the effective date of such action.

4. The Casino Operator or Casino Manager and each casino gaming licensee shall maintain a copy of the self-exclusion list and shall establish procedures to ensure that the self-exclusion list is updated and that all appropriate members, employees and agents of the Casino Operator or Casino Manager and each casino gaming licensee are notified of any addition to or deletion from the list within five business days after receipt of the notice from the division. Appropriate members, employees, and agents of the Casino Operator or Casino Manager and each casino gaming licensee are those whose duties and functions require access to such information. The notice provided by the division shall include the name and date of birth of any person whose name shall be removed from the self-exclusion list and the following information concerning any person whose name shall be added to the self-exclusion list:

- a. name, including any known aliases or nicknames;
- b. date of birth;
- c. address of current residence;
- d. telephone number of current residence;
- e. Social Security number, if voluntarily provided

by the person requesting self-exclusion;

f. driver's license or state identification number;

g. a physical description of the person, including height, weight, gender, hair color, eye color and any other physical or distinguishing characteristic that may assist in the identification of the person; and

h. a copy of the photograph taken by the division.

5. Information furnished to or obtained by the board and division pursuant to this Section shall be deemed confidential and not be disclosed pursuant to R.S. 27:27.1.

6. Neither the Casino Operator, Casino Manager, nor any casino gaming licensee or any employee or agent thereof shall disclose the self-exclusion list or the name of, or any information about, any person who has requested self-exclusion to anyone other than employees and agents of the Casino Operator or Casino Manager or casino gaming licensee whose duties and functions require access to such information. Notwithstanding the foregoing, the Casino Operator or Casino Manager and each casino licensee may disclose the name of and information about a self-excluded person to appropriate employees of other casino licensees in Louisiana for the purpose of alerting other casinos that a self-excluded person has tried to gamble or obtain gaming related privileges or benefits in a casino gaming establishment. Nothing herein shall be construed to prohibit the licensee from disclosing the identity of self-excluded persons to affiliated entities in Louisiana and other gaming jurisdictions for the limited purpose of assisting in the proper

administration of compulsive and problem gaming programs operated by such affiliated entities.

E. Duties of the Casino Operator, Casino Manager, and each Casino Gaming Licensee

1. The Casino Operator or Casino Manager and each casino gaming licensee shall establish procedures that are designed, to the greatest extent practicable, to:

a. permit appropriate employees of the Casino Operator or Casino Manager and the casino gaming licensee to identify a self-excluded person when present in the casino gaming establishment and, upon such identification, immediately notify:

i. those employees of the Casino Operator or Casino Manager and the casino gaming licensee designated to monitor the presence of self-excluded persons; and

ii. appropriate representatives of the board and division;

b. refuse wagers from and deny any gaming privileges to any self-excluded person;

c. deny casino credit, check cashing privileges, player club membership, direct mail and marketing services complimentary goods and services, junket participation and other similar privileges and benefits to any self-excluded person;

d. enforce the provisions of LAC 42:III.304.D.6.

2. The Casino Operator or Casino Manager and each casino gaming licensee shall distribute a packet of written materials approved by the Division to any person inquiring or requesting information concerning the board's self-exclusion program.

3. The Casino Operator or Casino Manager and each casino licensee shall submit to the board for approval a copy of its procedures established pursuant to LAC 42:III.304.D.4 and E.1 above within 120 days from the date this rule becomes effective. Any amendments to said procedures shall be submitted to the board and approved prior to implementation.

4. If a self-excluded person enters, attempts to enter, or is in the casino gaming establishment and is discovered by the Casino Operator or Casino Manager or any casino gaming licensee, the Casino Operator or Casino Manager or casino gaming licensee shall immediately notify the division of such fact and, unless otherwise directed by the division, immediately eject such excluded person from the casino gaming establishment.

5. Upon discovery of a self-excluded person in the casino gaming establishment, both the security and surveillance departments of the Casino Operator, Casino Manager and casino gaming licensees shall initiate a joint investigation, unless otherwise directed by the division.

a. The joint investigation shall seek to determine:

i. responsibility of employees of the gaming establishment for allowing an excluded person to gain access to the casino gaming establishment; and

ii. the net amount of winnings or losses attributable to the excluded person.

b. The Casino Operator or Casino Manager and each casino gaming licensee shall provide a written report of the results of the joint investigation to the division.

6. The casino gaming establishment shall ensure that no winnings or losses arising as a result of prohibited

gaming activity are paid or recovered by a self-excluded person.

F. Sanctions

1. Any casino gaming licensee, Casino Operator, or Casino Manager who willfully fails to exclude a self-excluded person from the casino gaming establishment shall be in violation of these rules and may be subject to administrative action pursuant to R.S. 27:27.1.J and this Section.

2. The penalty for violation of LAC 42:III.304.F.1 shall be \$25,000 or administrative action including but not limited to suspension or revocation.

G. Removal from Self-Exclusion List

1. Any self-excluded person may, upon the expiration of five years from the date of exclusion, submit a written request to the board for a hearing to have his or her name removed from the self-exclusion list. Such request shall be in writing and state with specificity the reason for the request.

2. The request shall include a written recommendation from a qualified mental health professional as to the self-excluded person's capacity to participate in gaming activities without adverse risks or consequences. The person seeking removal from the self-exclusion list may be required to obtain a separate and independent recommendation from a qualified mental health professional, approved by the hearing officer, as to the self-excluded person's capacity to participate in gaming activities without adverse risks or consequences.

3. If the hearing officer determines that there is no longer a basis for the person seeking removal to be maintained on the self-exclusion list, the person's name shall be removed from the self-exclusion list and his or her exclusion shall be terminated. The division shall notify the Casino Operator or Casino Manager and all casino gaming licensees of the determination. The Casino Operator, Casino Manager or any casino gaming licensee may continue to deny gaming privileges to persons who have been removed from the list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

§305. Advertising; Compulsive Gambling Information

A. In any advertisement of gaming activities or of a gaming establishment conducting operations pursuant to the provisions of Chapters 4, 5, 6 or 7 of the Louisiana Gaming Control Law that is offered to the general public in print by any licensee or the Casino Operator or Casino Manager, the toll-free telephone number of the National Council on Problem Gambling or a similar toll-free number approved by the board shall be placed on such advertisement.

B. The penalty for violation of this Section shall be \$1,000 for the first offense, \$2,500 for the second offense and \$5,000 for the third offense. The penalty for fourth and subsequent offenses shall be \$5,000 or administrative action including but not limited to suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control board, LR 28:

**Part VII. Pari-Mutuel Live Racing Facility
Slot Machine Gaming**

Chapter 29. Operating Standards

**§2933. Compulsive or Problem Gamblers-Telephone
Information and Referral Service-Posting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:767 (April 2000), repealed LR 28:

Chapter 37. List of Excluded Persons

Chapter 37 is repealed in its entirety.

Part IX. Landbased Casino Gaming

Chapter 29. Operating Standards

**§2939. Compulsive or Problem Gamblers-Telephone
Information and Referral Service-Posting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1954 (October 1999), repealed LR 28:

Chapter 37. List of Excluded Persons

Chapter 37 is repealed in its entirety.

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2407. Operation of Video Draw Poker Devices

A. - A.16. ...

17. Repealed.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 28:

Part XIII. Riverboat Gaming

Chapter 29. Operating Standards

**§2933. Compulsive or Problem Gamblers Telephone
Information and Referral Service-Posting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995).

Chapter 37. List of Excluded Persons

Chapter 37 is repealed in its entirety.

Family Impact Statement

Pursuant to the provisions of R.S. 49:953.A. the Louisiana gaming Control Board, through its chairman, has considered the potential family impact of adopting LAC 42:III.301 et seq.

It is accordingly concluded that adopting LAC 42:III.301 et seq. would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;

5. the effect on the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform the function as contained in the proposed rule.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 342-2465, and may submit comments relative to these proposed rules, through May 10, 2002, to 339 Florida Street, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Compulsive and Problem Gambling**

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

It is anticipated that there will be no direct implementation costs or savings to state or local government units.

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

No effect on revenue on revenue collections is anticipated.

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

Costs will be incurred by casino licensees and the Casino Operator (Harrah's-New Orleans) in order to develop and implement new, additional, compulsive and problem gambling programs. The industry estimates cost for the first year to be between \$50,000-\$75,000 per property for program development, implementation, employee training, and monitoring. Sixteen casino gaming establishments are in operation at this time, therefore FY 2002-2003 costs to directly affected persons are estimated to be between \$800,000 and \$1,200,000. Costs in subsequent years should decrease significantly.

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

No effect on competition or employment is estimated.

Hillary J. Crain
Chairman
0204#046

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Definition of Lease or Rental
(LAC 61:I.4301)**

Under the authority of R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 47:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301 relative to the definition of *lease or rental* for sales tax purposes.

These proposed amendments provide guidance concerning exclusions from the definition of *lease or rental* provided by R.S. 47:301(7)(b) through (h). The proposed amendments also provide guidance to lease-rental dealers and their customers in distinguishing between transactions for the *lease or rental* of tangible personal property and transactions

for the providing of services. The proposed Rule addresses transactions to distinguish between lease-rentals and services, including furnishing of lighted construction barricades, furnishing of ornamental plants by an owner who agrees to water, fertilize, prune, and otherwise care for the plants, furnishing of portable toilet facilities, furnishing of scaffolding, furnishing of gas compression equipment, furnishing of refuse dumpsters by refuse service companies, and cylinder retention (demurrage) charges in connection with the sale of compressed gases.

This proposed Rule will supersede any conflicting policy statements previously issued by the department, including Policy and Procedure Memoranda. This is consistent with LAC 61:III.101.D.1, which provides that Policy and Procedure Memoranda may not be used to disseminate tax policy.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered By the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4301. Definitions

A. - C. ...

* * *

*Lease or Rental*C

a. General. The *lease or rental* of tangible personal property for a consideration is a transaction that is subject to the sales tax. The term *lease or rental* means to grant another the right to use or possess tangible personal property for a period of time and for a consideration without the transfer of title to the property. Re-leases or sub-leases and re-rentals or sub-rentals are also considered leases or rentals.

b. Statutory Exclusions. The following arrangements or agreements for the use of tangible personal property are specifically excluded from the definition of *lease or rental* in R.S. 47:301(7)(b) through (h):

i. the *lease or rental* for re-lease or re-rental of property to be used in connection with the operating, drilling, completion, or reworking of oil, gas, sulphur, or other mineral wells;

(a). the *lease or rental* for re-lease or re-rental of casing tools, pipe, drill pipe, tubing, compressors, tanks, pumps, power units, and other drilling or related equipment qualifies for exclusion if the property is to be used for one of the specified purposes;

(b). the re-lease or re-rental to the ultimate user is not exempt;

ii. the *lease or rental* of property to be used in the performance of contracts with the United States Navy for the construction or overhaul of U.S. Naval vessels;

iii. the *lease or rental* of airplanes or airplane equipment by commuter airlines domiciled in Louisiana;

iv. the *lease or rental* of items that are reasonably necessary for the operation of free hospitals in Louisiana;

v. the *lease or rental* of certain items of educational materials for classroom instruction by approved private and parochial elementary and secondary schools;

vi. the *lease or rental* by Boys State of Louisiana, Inc. and Girls State of Louisiana, Inc. of materials for use by those organizations in their educational and public service programs for youth; and

vii. the *lease or rental* of motor vehicles by motor vehicle dealers and manufacturers for use by customers in the performance of dealers' or manufacturers' warranty obligations or when the applicable warranty has lapsed and the leased or rented motor vehicle is provided at no charge.

c. Other Exceptions

i. Some arrangements for the use of tangible personal property are not considered leases or rentals because of the implied nature of the arrangement. Arrangements that are not considered leases or rentals are transactions where the true object is to secure a service or a revenue sharing agreement.

ii. The term *lease or rental* does not include transactions that provide a service. The "providing of a service" is any transaction that includes the performance of services along with tangible personal property for a consideration when the performance of the service is the essence of the transaction. Establishing the nature of a transaction involving both the rendering of a service and the providing of tangible personal property as a service or a taxable *lease or rental* is determined by identifying the "true object" of the transaction. Identifying the "true object" of a transaction involves a fact-intensive analysis that includes an evaluation of the purpose and degree of the owner's ongoing contact with the tangible personal property or the percentage of time that the owner operates or controls the tangible personal property.

(a). Purpose and Degree of the Owner's Control over Tangible Personal Property while It Is in Service to Another

(i). When the owner or the owner's equipment operator retains control of the tangible personal property, the purpose of the owner's control must be examined. If the lessee cannot operate the equipment without the presence of the owner's operator, then this factor indicates that the essence of the transaction is a service.

(ii). The purpose of the owner's contact is relevant even if a person can direct the specific use of the owner's equipment while it is operated by the owner's operator. This is especially true for equipment such as boats, draglines, trucks, tractors, or automobiles. The owner of the equipment is performing a service through the actions of its operator and, because the lessee would be unable to operate the tangible personal property of the owner without the operator, the true object of the transaction is a service.

(iii). Even when the owner retains contact with the tangible personal property after providing the property to the customer, the degree of owner control should be considered. This is especially critical when the owner merely provides advisory personnel and the customer has the capability of operating the equipment without their assistance. For example, a computer manufacturer may lease or rent a computer to a customer and provide technical support by its employees. The customer operates the computer and only contacts the technical support personnel when there is a problem. This transaction would be considered a *lease or rental* because the computer manufacturer's employees are merely providing advice and the customer has the ability to operate the computer without the assistance of the owner's personnel.

(b). Percentage of Time That the Owner Operates or Controls the Tangible Personal Property. The factor to consider in this element is whether or not the owner or its operators have continuous personal contact over the property while the property is being used for its intended purpose by the customer. If, however, the owner's personnel contact the property only periodically while the property is in service to customers, such as for servicing or maintaining the property, then the small amount of time that the owner controls the property would not rise to the level of providing a service.

iii. The tax imposed on *lease or rental* payments also applies to charges for maintaining or servicing tangible personal property when these charges are a necessary component of the *lease or rental*. Even if these charges are separately stated, they are still subject to the sales tax on *lease or rental* payments because the lessee is required to purchase these services as a condition of the *lease or rental* agreement.

d. Examples

i. Taxable Leases or Rentals. The following transactions are examples of taxable leases or rentals of tangible personal property. These examples are for illustration only and are not intended to be all-inclusive:

(a). Lighted Construction Barricades. When barricades and lights are placed on a construction area, they remain on the project site with little or no contact by the owners other than as necessary to maintain the property, such as changing batteries or bulbs.

(b). Plants. A nursery delivers and places live ornamental plants at an office and the plants remain the property of the plant nursery. The nursery has only minimal contact to water, fertilize, and prune the plants, which is necessary to maintain its property.

(c). Portable Toilets. Portable toilet facilities are delivered to a location with only periodic maintenance of the property. The true object of the transaction is to provide additional restroom facilities for workers or people attending special events. Servicing of the toilets is a necessary charge that the lessee must purchase as a condition of the *lease or rental* agreement.

(d). Scaffolding. A company that delivers and erects scaffolding at a location designated by a customer, leaves the site, and returns only to dismantle and move or to repair the scaffolding has entered into a taxable *lease or rental* transaction. The owners of the scaffolding company are not in continuous control of the scaffolding and once erected, the scaffolding serves the purpose contracted for by the customer.

(e). Gas Compression Equipment. A gas compression company that provides equipment at a gas field to boost pressure does not exert continuous physical and personal control over the equipment through its employees or operators. Since the gas compression company does not retain contact with the equipment, the customer has been granted possession and use of the equipment for a period of time for a consideration. The true object of this transaction is the *lease or rental* of the equipment.

(f). Retention Fees and Late Charges Associated With a Taxable Sale or Lease-Rental. Some taxable sales of tangible personal property include an agreement allowing the customer to retain the seller's container or property for a certain period of time. An example would be a customer's

right to temporarily possess a seller's cylinders containing welding gas. If the cylinder is retained past a certain designated period, the gas seller charges the customer a retention or demurrage charge for this privilege. This retention charge associated with a taxable sale of tangible personal property is a taxable *lease or rental* payment because it represents consideration paid by a customer for the right to use or possess equipment belonging to another. Similarly, late fees that customers are charged for retaining tangible personal property past the period of time originally agreed upon by the parties, such as the leasing of automobiles or the renting of videotapes, are also taxable.

ii. Nontaxable Services. The following transactions involving the owner's tangible personal property are considered nontaxable services. These examples are for illustration only and are not intended to be all-inclusive.

(a). Scaffolding. When a scaffolding company's personnel are on their customers' sites at all times to move or adjust the scaffolding while it is being used by the customers, then the true object of the transaction is a nontaxable service.

(b). Gas Compression Equipment. The true object of a contract between a customer and a company providing gas compression equipment is a nontaxable service when the gas compression company provides gas compression equipment with personnel who will be continuously present on-site to monitor and adjust the equipment as necessary.

(c). Refuse Service. The customer's intent in entering into this transaction is to obtain nontaxable refuse service. Even if a refuse company requires all of its customers to utilize a particular refuse container owned by the company in order for the customer to receive the service of refuse removal, the true object of the agreement is periodic refuse removal. The dumpster is incidental tangible personal property that assists the refuse company in identifying customers that have purchased its refuse removal services.

(d). Retention Fees and Late Charges Associated with the Providing of a Nontaxable Service. In providing a nontaxable service, such as freight transportation, some companies charge customers additional fees for retaining the company's property, such as freight cars or tractor-trailers, past the original period designated by the parties. This additional fee is nontaxable because it is incidental to the original transaction, a nontaxable service.

iii. Revenue Sharing Arrangements. Agreements, joint ventures, arrangements, or partnerships between movie theater operators and film distributors place significant restrictions on the use of the movies and the proceeds from the use of the movies. These agreements are more in the nature of revenue sharing agreements and would not qualify as leases or rentals because of the restrictions placed on the party using the movies. An example of this arrangement would be an agreement between a movie theater operator and a film distributor that not only stipulates that the proceeds from the showing of the film are to be shared, but also specifies the amount to be charged to the movie patron, the number of or the time of showings, or the types or sizes of the facilities where the film is shown.

* * *

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 15409, Baton Rouge, LA 70895-5409 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m. Tuesday, May 28, 2002. A public hearing will be held on Wednesday, May 29, 2002, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Definition of Lease or Rental

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

Implementation of this proposed rule will have no impact on state or local governmental units' costs. This proposal amends the Department's interpretation of "lease or rental" for sales tax purposes as defined in R.S. 47:301(7). This proposal is being adopted to better reflect the actual intent of transactions involving this issue.

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

There could be an effect on the revenue collections of state and local governmental units as a result of this proposed regulation. This proposal would consider many transactions that have previously been treated as nontaxable services involving tangible personal property to be taxable rentals and require the payment of sales and use tax on them. Conversely, taxpayers previously considered as engaging in nontaxable services involving the use of tangible personal property could not purchase tangible personal property tax free under the provisions of R.S. 47:301(10) and (18). These statutes allow an "exclusion" from sales tax for tangible personal property purchased for lease or rental. Because of this proposal, more vendors would qualify for this exclusion. The net effect of these actions is indeterminable, but thought to be immaterial.

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

This proposed regulation would increase costs to customers of services that were previously considered not taxable while providing an economic benefit to the vendors of those services. The estimated costs to customers and the economic benefits to vendors are indeterminable, but believed to be immaterial.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0204#082

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Furnishing of Cold Storage Space (LAC 61:I.4301)

Under the authority of R.S. 47:301 and R.S. 47:1511 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301 relative to the definition of the furnishing of cold storage space for sales tax purposes.

Revised Statute 47:301(14)(f) defines *sales of services* to include "the *furnishing of cold storage space* and the furnishing of the service of *preparing tangible personal property for cold storage*, where such service is incidental to the operation of storage facilities." These proposed amendments provide guidance concerning the types of transactions that are within the purview of the statute. The service *furnishing of cold storage space* is interpreted to mean all transactions in which customers, for consideration, are provided the use of frozen or refrigerated facilities including but not limited to transactions in which an owner or operator of a frozen or refrigerated facility sets aside a specified quantity of refrigerated or frozen space in that facility for customers and transactions in which possession of the customers' property is transferred to the owner or operator of a frozen or refrigerated facility for retention and safekeeping in the facility as in a bailment or deposit.

The proposed amendments also clarify that sales tax must be collected on the charges for *preparing tangible personal property for cold storage*, such as packaging, wrapping, containerizing, cleaning, or washing, when provided in conjunction with the *furnishing of cold storage space*. Under the proposed rule, the furnishing of air-conditioned warehouses or mini-storage units, that are cooled only to a normal room temperature level or above, are not considered the *furnishing of cold storage space* for sales tax purposes.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4301. Definitions

A. - C. ...

*Sales of Services*C

a. - g.iii. ...

h. R.S. 47:301(14)(f) defines the furnishing of cold storage space and preparing tangible personal property for cold storage as services subject to sales and use tax.

i. *Cold Storage Space*Cany enclosed area where the temperature or humidity is regulated. The temperature does not have to be reduced below that of the outside atmosphere, however it must be controlled to the extent necessary for the proper preservation of the items stored therein.

ii. *Furnishing of Cold Storage Space*Cincludes all transactions in which customers, for consideration, are allowed to use *cold storage space* facilities, including but not limited to transactions in which:

(a). the owner or operator of a *cold storage space* sets aside a specific area or volume of space in the facility for customers, when customers are required to compensate for the space set aside regardless of the degree of use of that space; and

(b). the possession of customers' property is transferred to the owner or operator of a *cold storage space* for retention and safekeeping in the facility as a bailment or deposit transaction.

iii. Charges for the *furnishing of cold storage space* are subject to sales and use tax even when:

(a). the specific space occupied or set aside for customers is not the same space for the duration of the customers' use;

(b). the owner of the facility retains discretion in assigning or reassigning customers' space;

(c). customers do not have independent access to the space set aside for them in the frozen or refrigerated facility; or

(d). the charges are measured by weight, volume, or type of product to be stored or the temperature of storage, or any combination of these or other factors.

iv. Storage space in air-conditioned warehouses or mini-storage units, that are cooled only to a normal room temperature level or above, are not considered the *furnishing of cold storage space* for sales tax purposes.

v. *Preparing tangible personal property for cold storage* is included in *sales of services* only if it is incidental to the operation of cold storage facilities.

(a). *Preparing tangible personal property for cold storage* includes but is not limited to packaging, wrapping, containerizing, cleaning or washing.

(b). Separately stated charges for handling the property to be placed in or removed from the facility are not subject to the sales tax. If handling charges are included in the price for the *furnishing of cold storage space* or *preparing tangible personal property for cold storage*, tax is due on the entire amount.

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, May 28, 2002. A public hearing will be held on Wednesday, May 29, 2002, at 1:30 p.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Furnishing of Cold Storage Space

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

These proposed amendments, pertaining to taxable services under R.S. 47:301(14)(f), expand the definitions of "cold storage" and "preparing tangible personal property for cold storage" to reflect the transaction's intent in determining whether it is a taxable service. Implementation of these proposed amendments will have no impact on state or local governmental units' costs.

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

There should be an increase in the sales and use tax collections of state and local governmental units as a result of these proposed amendments. Under this proposal, many transactions previously considered nontaxable will be considered taxable services under R.S. 47:301(14)(f). We do not have data to calculate the additional state and local sales tax that will be collected as a result of these proposed amendments, but the additional amount is estimated to be minimal.

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

These proposed amendments will increase costs to customers who purchase storage services that were previously considered not taxable. We do not have data to estimate these additional costs, but the additional costs are believed to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed amendments should have no effect on competition or employment.

Cynthia Bridges
Secretary
0204#081

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

TANF Review

(LAC 67:III.902, 1207, 2902, 5203, 5305, and 5407)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, §§902 and 1207 in the Family Independence Temporary Assistance Program (FITAP), §2902 in the Family Independence Work Program (FIND Work), §5203 in the Wrap-Around Child Care Program, §5305 in the Kinship Care Subsidy Program (KCSP), and §5407 in the Teen Pregnancy Prevention Program. The proposed amendments were effected February 5, 2002, by a Declaration of Emergency.

These changes are corrections being made at the direction of the United States Department of Health and Human Services, Administration for Children and Families, following a review of Louisiana's Temporary Assistance for Needy Families (TANF) State Plan for these programs, all of which are funded by the TANF Block Grant to Louisiana.

In order to begin the process of welfare reform, the agency adopted its state plan as it existed on October 1, 1996;

however, the agency failed to elect a date under the federal grandfather provision. Therefore, the state plan adoption date is being corrected for FITAP and FIND Work.

The text in §§1207 and 5305 is being expanded to clarify a client's right to a fair hearing.

Language at §5203 is being amended to specify who is required to furnish proof of a social security number in the Wrap-Around Child Care Program.

The review noted that the Teen Pregnancy Prevention Program does not address the problem of statutory rape. This language is being added to §5407.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 9. Administration

§902. State Plan

A. The Title IV-A State Plan as it existed on August 21, 1996, is hereby adopted to the extent that its provisions are not in conflict with any emergency or normal rules adopted or implemented on or after August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), amended LR 28:

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§1207. Certification Period and Reapplication

A. Certification periods of a set duration will be assigned. In order to continue to receive benefits, the household must timely reapply and be determined eligible. In the month preceding the final month of certification, a notice of expiration and Application for Continued Assistance will be provided to the household. The notice shall inform the household that failure to timely reapply will result in closure and include the right to a fair hearing. If the payee fails, without good cause, to keep a scheduled appointment, the case will be closed without further notification. Also, if during the application process, a change is reported which results in a determination of ineligibility or a reduction in benefits, this change will be made effective the following month.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 28:

Subpart 5. Family Independence Work Program (FIND Work)

Chapter 29. Organization

Subchapter A. Designation and Authority of State Agency

§2902. State Plan

A. The Title IV-F and IV-A/F State Plan as it existed on August 21, 1996, is hereby adopted to the extent that its provisions are not in conflict with any emergency or normal rules adopted or implemented on or after August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:450 (April 1997), amended LR 28:

Subpart 12. Child Care Assistance

Chapter 52. Wrap-Around Child Care Program

§5203. Conditions of Eligibility

A. - D. ...

E. The household must provide the information and verification necessary for determining eligibility and payment amount. Required verification includes:

1. proof of social security numbers, that is, each applicant for, or recipient of, Wrap-Around Child Care is required to furnish a Social Security number or to apply for a Social Security number if such a number has not been issued or is not known;

E.2. - G ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:429 (March 2001), amended LR 27:1560 (September 2001), LR 28:

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§5305. Certification Period and Reapplication

A. Certification periods of a set duration will be assigned. In order to continue to receive benefits, the household must timely reapply and be determined eligible. In the month preceding the final month of certification, a notice of expiration and Application for Continued Assistance will be provided to the household. The notice shall inform the household that failure to timely reapply will result in closure and include the right to a fair hearing. If the payee fails, without good cause, to keep a scheduled appointment, the case will be closed without further notification. Also, if during the re-application process, a change is reported which results in a determination of ineligibility the case will be closed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:351 (February 2000), amended LR 28:

Subpart 14. Teen Pregnancy Prevention

Chapter 54. Teen Pregnancy Prevention Program

§5407. Program Activities

A. The following program activities shall be used to coordinate the teen-oriented programs in Louisiana. These activities allow for expanding, redeveloping, and refining of these programs to ensure that the goals and objectives will be met:

1. - 7. ...

8. outreach and education on the problems of statutory rape directed towards law enforcement, education, and counseling services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:

Family Impact Statement

This rule will have no impact on the stability and functioning of the family or on parental rights and will have no impact on the budget of the affected family.

Interested persons may submit written comments by May 29, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on May 29, 2002, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Gwendolyn P. Hamilton
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: TANF Review

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

The cost of the added program activity in the Teen Pregnancy Prevention Program will be kept within the program's annual budget of \$7,500,000. Although the annual budget will not change, the agency now intends to administer the program activities through a smaller number of contractors. Thus, the cost of this added activity will be absorbed with no increase in program costs. Otherwise, the proposed rule corrects language in various sections of the LAC. Current policy and procedures which direct the various TANF-funded programs are such that the intent of the amended language is presently being followed and administered by the agency. The immediate implementation cost to state government is the minimal cost of publishing the rule and printing policy changes at a projected cost of \$568. Funds for such actions are included in the agency's annual budget. There are no costs or savings to local governmental units.

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

This rule will have no impact on revenue collections of state and local governmental units.

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

There are no estimated costs or economic benefits to directly affected persons or non-governmental groups as a result of this proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Ann S. Williamson
Assistant Secretary
0204#071

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

TANF Review Aliens
(LAC 67:III.1223, 1931, 1932, and 5323)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Chapter 12, Family Independence Temporary Assistance Program (FITAP), Chapter 19, Food Stamp Program, and Chapter 53, Kinship Care Subsidy Program (KCSP) by amending §1223 in the Family Independence Temporary Assistance Program (FITAP), §1931 and 1932 in the Food Stamp Program, and §5323 in the Kinship Care Subsidy Program (KCSP).

These changes are corrections being made at the direction of the United States Department of Health and Human Services, Administration for Children and Families, following a review of the FITAP chapter of Louisiana's TANF State Plan. Since federal regulations regarding citizenship and alien eligibility apply to the Kinship Care Subsidy and Food Stamp Programs, review of LAC regulations and program policy revealed that corrections were also needed regarding food stamps and KCSP. Although most of these corrections are either grammatical or technical, one change adds a new class of eligible aliens - victims of trafficking in persons. These corrections were effected by an emergency rule signed February 5, 2002.

Title 67 SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1223. Citizenship

A. Each FITAP recipient must be a United States Citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 4. ...
5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);
6. - 8.b. ...
- c. cancellation of removal under Section 1229b of the INA (as in effect prior to April 1, 1997); or
- d. ...
- e. cancellation of removal pursuant to section 1229b(b)(2) of the INA;
9. an alien child of a battered parent or the alien parent of a battered child as described in §1223.A.8; or
10. an alien who is a victim of a severe form of trafficking in persons.

B. Time-Limited Benefits. A qualified alien who enters the United States on or after August 22, 1996, is ineligible for five years from the date of entry into the United States unless:

1. - 2. ...
3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208 or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);
4. ...
5. the alien is an *Amerasian* immigrant admitted pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as amended;
6. - 7. ...
8. the alien is a victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter D. Citizenship and Alien Status

§1931. Qualified Aliens

A. In addition to U.S. citizens, the following qualified aliens are eligible for benefits:

1. - 4. ...
5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);
6. - 8.b. ...
- c. cancellation of removal under Section 1229b of the INA (as in effect prior to April 1, 1997); or
- d. ...
- e. cancellation of removal pursuant to Section 1229b(b)(2) of the INA;
9. an alien child of a battered parent or the alien parent of a battered child as described in §1931.A.8; or,
10. an alien who is the victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 7:265 (May 1981), amended by the Department of Social Services, Office of Family Support, LR 22:286 (April 1996), LR 25:710 (April 1999), LR 28:

§1932. Time Limitations for Certain Aliens

A. The following qualified aliens are eligible for benefits for a period not to exceed seven years after they obtain designated alien status:

1. - 2. ...
3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date [April 1, 1997] of §307 of Division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of P.L. 104-208);

4. - 5. ...

6. an alien who is the victim of a severe form of trafficking in persons.

B. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), amended LR 28:

Subpart 13. Kinship Care Subsidy Program (KCSP)
Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5323. Citizenship

A. Each KCSP recipient must be a United States citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);

6. - 8.b. ...

c. cancellation of removal under Section 1229b of the INA (as in effect prior to April 1, 1997); or

d. ...

e. cancellation of removal pursuant to section 1229b(b)(2) of the INA;

9. an alien child of a battered parent or the alien parent of a battered child as described in §1223A.8; or

10. an alien who is a victim of a severe form of trafficking in persons.

B. Time-limited Benefits. A qualified alien who enters the United States on or after August 22, 1996 is ineligible for five years from the date of entry into the United States unless:

1. - 2. ...

3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

4. ...

5. the alien is an *Amerasian* immigrant admitted pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as amended;

6. - 7. ...

8. the alien is a victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 27:2264 (December 2001), LR 28:

Family Impact Statement

This rule will generally have no effect on the functioning of the family or on parental authority. It would have a positive impact on the family budget and stability by allowing certain non-citizens (victims of a severe form of trafficking in persons) who might have natural or custodial children to receive FITAP, KCSP, and/or Food Stamp benefits.

Interested persons may submit written comments by May 29, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed rule will be held on May 29, 2002, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call area code 225-342-4120 (voice and TDD).

Gwendolyn P. Hamilton
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: TANF ReviewC Aliens**

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

The proposed rule could result in an increase in state costs due to the eligibility of qualified aliens who are victims of trafficking in persons. Based on information regarding populations and percentages, it is projected that state program costs could increase in FY 02/03 and subsequent years as follows: \$10,771 in Family Independence Temporary Assistance Program (FITAP) funds, \$2,664 in Kinship Care Subsidy Program (KCSP) funds, and \$93,636 in federal Food Stamp Program benefits. FITAP and KCSP benefits would be paid from the Louisiana Temporary Assistance for Needy Families (TANF) Block Grant which is federally funded. The minimal cost of publishing the rule and printing policy changes is expected to be approximately \$465. There will be no costs to local governmental units.

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

There will be no impact on revenue collections for state or local governmental units.

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

Qualified aliens who meet the definition of "victim of a severe form of trafficking in persons" could be eligible for benefits from one or more OFS programs. Total economic benefits awarded in Louisiana are projected to be as much as \$107,071 per year in food stamps and FITAP and KCSP benefits. Non-governmental groups will be unaffected by this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

The proposed rule will have no impact on competition and employment.

Ann S. Williamson
Assistant Secretary
0204#070

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Class "A" Child Day Care (LAC 48:1.Chapter 53)

The Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to amend the Louisiana Administrative Code, Title 48, Part I, Subpart 3, Licensing and Certification. This Rule is mandated by R.S. 46:1401 et seq. These standards are being revised to supersede any previous regulations heretofore published.

Title 48

PUBLIC HEALTHC GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

§5301. Purpose

A. It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to insure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to insure protection of all individuals under care in child care facilities and placement agencies and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate. This Chapter shall not give the Department of Social Services jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any curriculum or instruction of a school or facility sponsored by a church or religious organization so long as the civil and human rights of the clients and residents are not violated.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), amended LR 24:2345 (December 1998), LR 28:

§5302. Authority

A. Legislative Provisions

1. The state of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child care providers. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq. (Act 367 of 1956 and amended by Act 152 of 1962, Act 241 of

1968, Act 290 of 1976, Act 678 of 1977, Act 409 of 1978, Act 286 of 1985, Act 1463 of 1997 and Act 1237 of 1999) making mandatory the licensing of all child care facilities and child placing agencies, including child care providers.

2. In accordance with Act 1237 of the 1999 Legislative Session, a 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 12 1/2 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 24 hours in a continuous 7-day week is not considered a child care center.

B. Penalties

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency, shall be licensed.

2. The law provides a penalty for operation of a center without a valid license. The penalty for operation without a valid license is a fine of not less than \$75 nor more than \$250 for each day of operation without a license.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services through its duly authorized agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the department, and without previous notice all child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401 et seq.)

2. Whenever the department is advised or has reason to believe that any person, agency or organization is operating a non-exempt child care facility without a license, the department shall make an investigation to ascertain the facts.

3. Whenever the department is advised or has reason to believe that any person, agency or organization is operating in violation of the Child Care Class "A" Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment of children coming to the attention of the Department of Social Services will be investigated.

D. The Louisiana Advisory Committee

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class "A" facilities. ("New" meaning the first regulations written after Act 286 of 1985.);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, rules, and regulations for Class "A" facilities at least every three years;

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class "A" license.

2. The committee is composed of 19 voting members, appointed by the governor, including provider and consumer representation from all types of child care services, the educational and professional community and the director of the Bureau of Licensing who serves as an ex-officio member.

E. Waivers. 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, as long as the health and well-being of the staff and/or children are not imperiled. 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, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5303. 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 a license 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 Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; and City Fire Department (if applicable) should be obtained.

b. After securing 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
Web address: www.dss.state.la.us/offos/html/licensing.html

c. The completed application shall indicate Class "A" license. Anyone applying for state or federal funding shall apply for Class "A" license. Licensure fees are required to be paid by all providers. A Class "A" license may not be changed to a Class "B" license if revocation procedures are pending.

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, Sanitarian 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 Fire 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;
- v. director meets qualifications;
- vi. director designee meets qualifications (if applicable);
- vii. three positive, currently signed references on director;
- viii. three positive, currently signed references on director designee, (if applicable);
- ix. licensure survey verifying compliance with all minimum standards.

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 in §5303.A.2.f shall be submitted, except references and director qualifications if the director remains the same.

4. Change of Ownership Documentation

a. When a center changes ownership, the following information must be submitted prior to receiving a license:

- i. a new application; (submitted prior to the sale or day of sale);
- ii. full licensure fee;
- iii. current health, state fire, city fire (if applicable);
- iv. letter from previous owner;
- v. documentation of director qualifications as listed in §5309.A and B;
- vi. three positive currently signed references on the director;
- vii. appropriate information on the director designee, is applicable; and
- viii. copy of bill of sale.

b. If the above information is not received in the specified timeframe, the new owner must not operate until a license is issued and will be treated as an initial application rather than a change of ownership.

5. A license shall be issued only for the address on the application to a particular owner and is not transferable to another person or location or subject to sale. Two licenses shall not be issued simultaneously for the same physical address.

6. When a center is sold, discontinued, the operation has moved to a new location or the license has been revoked, the current license immediately becomes null and void.

7. All new construction or renovation of a center requires approval from agencies listed in §5303.A.2.d and the Bureau of Licensing prior to occupying the new space.

8. 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 provider's failure to maintain compliance with minimum standards.

B. Fees

1. An application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee which is due prior to licensure of the 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 non-refundable.

2. Annual licensure fees are required prior to renewal of the license. License fee schedules (based on capacity) are listed below:

15 or fewer:	\$ 25
16-50:	\$100
51-100:	\$175
101 or more:	\$250

3. Other Licensure Fees

a. \$25 replacement fee for any provider replacing a license when changes to the license are requested, i.e., change in capacity, name change, age range change. (There is no processing charge when the request coincides with regular renewal of license.)

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

C. Relicensing

1. The relicensing survey is similar to the original licensing survey. Documentation of the previous 12 months' activity shall be available for review. The director will have an opportunity to review the survey deficiencies (if any).

2. A license is issued for a period of up to one year based upon provider's compliance with minimum standards. Before expiration of the license, re-inspections by the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; city fire (if applicable) and the Bureau of Licensing shall be required.

3. If the survey reveals that the provider is not meeting minimum requirements, a recommendation will be made that the license be revoked or not renewed.

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

D. Denial, Revocation or Non-Renewal Of License. An application for a license may be denied, or a license may be revoked, or renewal 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 any 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. hiring or continued employment of any individual (paid or non-paid staff) convicted of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim, as shown by a certified copy of the record of the court of conviction;

5. if the director of the center is not reputable;

6. if the director or a member of the staff is temperamentally or otherwise unsuited for the care of the children in the center;

7. history of noncompliance;

8. failure of the owner of the center to hire a qualified director;

9. disapproval from any agency whose approval is required for licensure;

10. non-payment of licensure fee and/or failure to submit an application for renewal prior to the expiration of the current license;

11. any validated instance of corporal punishment, physical punishment, 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;

12. the center is closed with no plans for re-opening and no means of verifying compliance with minimum standards for licensure;

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

14. provider refuses to allow the bureau to perform mandated duties, i.e., denying entrance to the center, lack of cooperation for completion of duties, etc.;

15. recalled products (presence or use of any product by the provider that is listed in the newsletter issued by the attorney general's office).

E. Appeal Procedure. If the license is refused, revoked or denied because the provider does not ensure the compliance with the minimum requirements for licensure, the procedure is as follows.

1. The Department of Social Services, Bureau of Licensing, shall advise the director by certified letter of the reasons for refusal, revocation or denial and the right of appeal.

2. The director may appeal this decision by submitting a written request with the reasons to the Secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P.O. Box 2944, Baton Rouge, LA 70821-9118. This written request shall be post-marked within 30 days of the director's receipt of the above notification.

3. The Bureau of Appeals shall set a hearing within 30 days after receipt of such a request. An Appeals Hearing Officer shall conduct the hearing. The Hearing Officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the appeal is denied, the provider shall terminate operation of the center immediately.

4. If the provider continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the center is located for injunctive relief.

F. Required Notification. The director shall notify the bureau within 24 hours or the next workday the following reportable incidents. A verbal report is to be followed by a written report:

1. any death of a child while in the care of the provider;
2. any illness or injury requiring hospitalization or professional medical attention other than first aid of a child while in the care of the provider;
3. any fire;
4. any structural disaster;
5. any emergency situation that requires temporarily relocating children;
6. any unusual situation which would affect the care of the children, i.e., extended loss of power, water service, gas, etc.;
7. any child leaving the center unsupervised or with an unauthorized person.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5304. Definitions

AnniversaryCprovider's licensure year, determined by the month in which the initial license was issued to the provider/center and in which the license is eligible for renewal each year.

BureauCthe Bureau of Licensing of the Department of Social Services.

CapacityCthe number of children the provider is licensed to care for at any given time based on usable indoor and outdoor square footage as determined by the bureau.

CenterCa child care facility as defined in §5302.A.1.

Center StaffCall full or part-time paid or non-paid staff who perform routine services for the child care center and have direct or indirect contact with children at the center. Center staff includes the director, child care staff, and any other employees of the center such as the cook, housekeeper, driver, substitutes, and foster grandparents excluding extra-curricular personnel.

Change of LocationCprovider moves from one physical address to another.

Change of OwnershipCtransfer of ownership to someone other than the owner listed on the initial application. Ownership of the center business, not the building, determines the owner. Sale of a corporation also constitutes a change of ownership. Leasing of a child care business is not considered a change of ownership.

Clock HourCinvolvement or participation in a learning situation for 60 minutes.

Comparable SettingCpre-k, kindergarten, first grade, or a registered family day home.

Contract PersonCa third party with whom parents have a written agreement.

DepartmentCthe Department of Social Services of the State of Louisiana.

Direct SupervisionCvisual contact at all times.

DirectorC

Executive DirectorCthe owner or administrator. If on-site and responsible for the management, administration and supervision of the center, the executive director is also the center director. If not on-site or not functioning as center director, the executive director maintains responsibility for the management, administration and supervision of the center(s) through a center director or director designee.

Center DirectorCthe on-site staff who is responsible for the day-to-day operation of the center as recorded with the Bureau of Licensing. For the purpose of these regulations the term *director* means *center director* or *director designee*, if applicable.

Director DesigneeCthe on-site individual appointed by the director when the director is not an on-site employee at the licensed location. This individual shall meet director qualifications.

DisciplineCthe ongoing positive process of helping children develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

DocumentationCwritten evidence or proof, signed and dated by parties involved (director, parents, staff, etc.), on site and available for review.

Existing CenterCa center with a valid license prior to the effective date of these standards.

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

GroupCthe number of children assigned to a caregiver or team of caregivers occupying an individual classroom or well defined space within a larger room on a consistent or daily basis.

MedicationCall internal and external drugs, whether over the counter or prescribed. Medications include oral, inhalant, topical ointments, sprays, creams, etc.

Montessori SchoolCa facility accredited as a Montessori School by the Board of Elementary and Secondary Education under R.S. 17:3401 et. seq.

Nighttime CareCcare provided after 9 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

Owner or ProviderCa public or private organization or individual who delivers child care services for children.

ParentCparent(s) or guardian with legal custody of the child.

PostedCdisplayed in a conspicuous location in an area accessible to and regularly used by parents.

Shall or MustCmandatory.

ShouldCurged, advised or may.

Staff-in-ChargeCthe on-site staff appointed by the director as responsible for supervising the operation of the center during the temporary absence of the director.

Student TraineeCan individual who attends an institute of higher learning and observes in the child care center as a course requirement.

Temporary AbsenceCabsence for errands, conferences, etc.

Transportation Arranging or providing transportation of children for any reason including field trips and transportation by contract.

Volunteers Non-paid individuals who are not left alone with children, not counted in child/staff ratio, in center less than 10 days per calendar year.

Water Activity A water-related activity where children, under adult supervision, are in, on, near, or immersed in a body of water such as swimming pools, wading pools, water parks, lakes, rivers or beaches, etc.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5305. General Requirements

A. The director shall be responsible for ensuring that minimum licensing requirements are met.

B. A Louisiana child care license with current information and current expiration date shall be on display in an area accessible to the view of parents and visitors, except for church affiliated centers (R.S. 46:1408.D) that choose to keep the license on file and available upon request.

C. Provider shall maintain in force at all times current commercial liability insurance for the operation of a center to ensure medical coverage for children in the event of accident or injury. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, name of the insurance company, policy number, period of coverage and explanation of the coverage.

D. Parents shall not be required to waive the provider's responsibility.

E. Provider shall have documentation of yearly health or sanitary inspection and current approval from the Office of Public Health, Sanitarian Services.

F. Provider shall have documentation of yearly safety inspection and current approval from the Office of State Fire Marshal.

G. Provider shall have documentation of yearly safety inspection and current approval from the City Fire Department (if applicable).

H. Provider shall have certificate of occupancy (zoning) if applicable.

I. A daily attendance record for children, completed by the parent or center staff, including the time of arrival and departure of each child and the full name of the person to whom the child was released shall be maintained. Initials shall not be used. If the record is completed by center staff, that individual shall write the full name of the person to whom the child was released and sign his/her own name. Children who leave and return to the center during the day shall be signed in/out. A computer sign in/out procedure is acceptable if the record accurately reflects the time of arrival and departure as well as the name of the person to whom the child was released. This record shall accurately reflect the children on the childcare premises at any given time.

J. A daily attendance record for staff, including the director/owner, to include the time of arrival and departure

shall be maintained. Staff shall document in/out when not on the child care premises. This record shall accurately reflect persons on the childcare premises at any given time.

K. The provider shall have an individual immediately available in case of emergency to ensure adequate child/staff ratios and supervision. The name and telephone number of the emergency person shall be posted near the telephone.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5306. Policies and Procedures Related to Children

A. The provider shall have written policies that address admission and all reasons for expulsion of a child from the center.

B. The provider shall have a written description of its program, fees, and planned dates of closure.

C. The provider's written policies shall be available for review by parents, staff, and state agencies. Provider shall have documentation that parents have reviewed or have been given a written description of the center's program and policies.

D. Prior to admission, the director, in consultation with the parent, shall determine that individual needs of each child can adequately be met by the center's program and facilities.

E. There shall be a posted schedule of the day's plan of activities, allowing for flexibility and change. The program of activities shall be age-appropriate, and shall be adhered to with reasonable closeness, but shall accommodate and have due regard for individual needs and differences among the children. The program shall provide time and materials for both vigorous and quiet activities for children to share or to be alone, indoor and outdoor play and rest. Regular time shall be allowed for routines such as washing, lunch, rest, snacks and putting away toys. Active and quiet periods shall be alternated so as to guard against over stimulation of the child.

F. Children 5 years and younger shall have a daily rest period of at least one hour. Providers serve children in half-day programs are not required to schedule napping periods for these children.

G. While awake, infants and one year old children shall not remain in a crib/baby bed, swing, highchair, carrier, playpen, etc., for more than 30 consecutive minutes.

H. Discipline. Provider shall establish a policy in regard to methods of discipline. Any form of punishment that violates the spirit of this standard of discipline, even though it may not be specifically mentioned as forbidden, is prohibited. This written, separately posted policy shall clearly state all types of positive discipline that are used and that the following methods of discipline are prohibited.

1. No child shall be subject to physical punishment, corporal punishment, verbal abuse or threats.

2. Cruel, severe, unusual or unnecessary punishment shall not be inflicted upon children.

3. Derogatory remarks shall not be made in the presence of children about family members of children in care or about the children themselves.

4. No child or group of children shall be allowed to discipline another child.

5. When a child is removed from the group for disciplinary reasons, he shall never be out of sight of a staff member.

6. No child shall be deprived of meals or snacks or any part thereof for disciplinary reasons.

I. Abuse And Neglect. As mandated reporters, all center staff shall report any suspected abuse and/or neglect of a child in accordance with R.S. 14:403 to the local Child Protection Agency. This statement as well as the local Child Protection Agency's telephone number shall be posted separately.

J. Complaint Procedure. Parents shall be advised of the licensing authority of the bureau along with the current telephone number and address. Parents shall also be advised that they may call or write the bureau should they have significant, unresolved licensing complaints. The current telephone number and address of the bureau shall be posted separately in a conspicuous location in an area accessible to parents.

K. Open Door Policy. Parents shall be informed that they are welcome to visit the center anytime during regular hours of operation as long as their child is enrolled. The written policy shall be posted separately.

L. Non-Discrimination Policy. Discrimination by child care providers on the basis of race, color, creed, sex, national origin, handicapping condition or ancestry is prohibited. The written policy shall be posted separately.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5307. Children's Records

A. A record shall be maintained on each child to include:

1. child's information form (mastercard) with the following information, e.g. name, birth date, sex, date of admission, name and phone number of child's physician and dentist, dietary restrictions and allergies; signed and dated by the parent;

2. parental authorization to administer and/or secure emergency medical treatment;

3. signed agreements between the provider and the parent for each child giving permission to release the child to a third party listed by the parent including the non-custodial parent(s), or any other child care facilities, transportation services. A child shall never be released to anyone unless authorized in writing by the parent.

B. Provider shall maintain the confidentiality and security of all children's records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly, or indirectly, to any unauthorized person.

C. Provider shall obtain written, informed consent from the parent prior to releasing any information, recordings and/or photographs from which the child might be identified, except for authorized state and federal agencies. Provider utilizing any type of recordings or taping of children to include but not limited to digital recordings, videotaping,

audio recordings, web cam, etc., shall obtain documentation signed and dated by the parent indicating their awareness of such recordings.

D. For licensing purposes, children's records shall be kept on file a minimum of one year from 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, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5308. Required Staff

A. Each center shall have a qualified director who is an on-site full time employee at the licensed location and is responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental concerns and ensuring that minimum licensing requirements are met. When the director is not an on-site full time employee at the licensed location, there shall be a qualified director designee who is an on-site full time employee responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental concerns and ensuring that minimum licensing requirements are met.

B. When the director or director designee is not on the premises due to a temporary absence, there shall be an individual appointed as Staff-in-Charge who is at least 21 years of age. This staff shall be given the authority to respond to emergencies, inspections/inspectors, and parental concerns and have access to all required information.

C. If the number of children in care exceeds 42, the director/director designee's duties shall consist only of performing administrative functions.

D. There shall be regularly employed staff who are capable of fulfilling job duties of the position to which they are assigned.

E. There shall be adequate provisions for cooking and housekeeping duties, except for those centers approved by the Office of Public Health, Sanitarian Services to have food catered from an approved source. These duties shall not interfere with required supervision of children or required child/staff ratios.

F. If day and nighttime care are offered, there shall be separate shifts of staff. No employee may work day and night shifts consecutively.

G. There shall be provisions for substitute staff who are qualified to fulfill duties of the position to which they are assigned.

H. Child care staff shall be age 18 years or older. The provider may, however, include in the staff-child ratio, a person 16 or 17 years old who works under the direct supervision of a qualified adult staff. No one under age 16 shall be used as child care staff.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5309. Director Qualifications

A. The director/director designee shall be at least 21 years of age.

B. The director/director designee shall have documentation of at least one of the following upon date of hire as director or director designee:

1. a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education and one year of experience in a licensed child care center or comparable setting, subject to approval by the bureau;

2. an associate of arts degree in child development or a closely related area, and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

3. 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, subject to approval by the bureau;

4. a Child Development Associate Credential, (CDA), and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

5. diploma from a post secondary technical early childhood education training program approved by the Board of Elementary and Secondary Education, or child care education certificate program, plus one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

6. three years of experience as a director or staff in a licensed child care center, or comparable setting, subject to approval by the bureau; plus six credit hours in child care, child development, or early childhood education or 90 clock hours of training approved by the bureau. Up to three credit hours or 45 clock hours may be in management/administration education.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5310. Personnel Records

A. There shall be a record for each paid and non-paid staff person, including substitutes and foster grandparents on file at the center. Personnel record shall include:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth;
- c. address and telephone number;
- d. previous training/work experience;
- e. educational background;
- f. employee's starting and termination date;

2. documentation of three positive reference checks or telephone notes signed and dated. These references shall be obtained from persons not related to the employee;

3. written job descriptions for every position at the center. Job description to include: duties to be performed, hours of work, and supervisor;

4. a written statement of good health signed by a physician or designee. Health statement dated within three

months prior to offer of employment or within one month after date of employment is acceptable. A health statement is required every three years. Originals shall be presented upon request;

5. documentation of a satisfactory criminal record check, as required by R.S. 15:587.1. Provider shall request this clearance prior to the employment of any center staff. A criminal record clearance is not transferable from one employer to another. No staff with a criminal conviction of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim, shall be employed in a Class A child care center unless approved in writing by a district judge of the parish and the local district attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the bureau.

B. The following information shall be kept on file for extracurricular personnel, i.e. computer instructor, dance instructor, librarian, tumble bus personnel and therapeutic professionals:

1. a written statement of good health signed by a physician or designee. A health statement is required every three years;

2. documentation of a satisfactory criminal record check, as required by R.S. 15:587.1. Provider shall obtain this clearance prior to individual being present in the center. No individual with a criminal conviction of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim, shall be in a Class A child care center unless approved in writing by a district judge of the parish and the local district attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the bureau.

C. The following information shall be kept on file at the center for each student trainee:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth;
- c. address and telephone number;
- d. first and last date in center;

2. written job descriptions to include: duties to be performed, hours of work, and supervisor;

3. a written statement of good health signed by a physician or designee. A health statement dated within three months prior to the training start date or within one month after training begins is acceptable. Health statement is required every three years. Originals shall be presented upon request;

4. documentation of a satisfactory criminal record check, as required by R.S. 15:587.1 must be obtained if the student trainee has supervisory or disciplinary authority over children. Provider shall request this clearance prior to the training start date. A criminal record clearance is not transferable from one provider to another. No student trainee with a criminal conviction of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim shall be in a Class A child care center unless approved in writing by a District Judge of the parish and the local District Attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the bureau.

D. All visitors to the center shall have the following information on file:

1. name;
2. address/agency affiliation;
3. date of visit;
4. arrival and departure time;
5. reason/interest in center.

E. For licensing purposes, personnel records shall be kept on file a minimum of one year from termination of employment 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, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5311. Staff Development and Training

A. Orientation Training

1. Within one week of employment and prior to having sole responsibility for a group of children, each staff member, including substitutes and foster grandparents, shall receive orientation training to include the following topics:

- a. center policies and practices including health and safety procedures;
- b. emergency and evacuation plan;
- c. supervision of children;
- d. discipline policy;
- e. job description;
- f. individual needs of the children enrolled;
- g. detecting and reporting child abuse and neglect;
- h. current Child Care Class "A" Minimum Licensing Standards;
- i. confidentiality of information regarding children and their families.

2. This training shall be followed by four days of supervised work with children. Documentation shall consist of a statement/checklist in the staff record signed and dated by the staff person and director, attesting to having received such orientation training, and the dates of the supervised work with children.

B. Quarterly Training. The director shall conduct, at a minimum, one staff training session every three months. Documentation shall consist of the date of the training session, training topics and signatures, (not initials), of all staff in attendance.

C. Annual Review. All staff, including substitutes and foster grandparents, shall have a signed and dated checklist/statement that the following topics are annually reviewed:

1. center policies and practices including health and safety procedures;
2. emergency and evacuation plan;
3. supervision of children;
4. discipline policy;
5. job description;
6. individual needs of the children enrolled;
7. detecting and reporting child abuse and neglect;
8. current State Class A Minimum Licensing Standards;
9. confidentiality of information regarding children and their families.

D. Continuing Education

1. The director shall provide opportunities for continuing education of staff through attendance at child care workshops or conferences, for paid and non-paid staff who are left alone with children, or who have supervisory or disciplinary authority over children. The child care staff shall obtain 12 clock hours of training per center's anniversary year in job related subject areas. At least 3 of the 12 clock hours of training for directors/director designees shall be in administrative issues. Documentation shall consist of attendance records or certificates received by staff. This is in addition to the required training hours from the Department of Health and Hospitals, Pediatric First Aid and Infant/Child/Adult CPR. This training shall be approved by the Department of Social Services. Original certificates shall be made available upon request.

2. Cooks, drivers, and other ancillary personnel who are neither left alone with children, nor have supervisory nor disciplinary authority over children shall complete at least three clock hours of training in job related topics per center's anniversary year.

E. CPR and First Aid

1. There shall be a minimum of at least 50 percent of all staff on the premises and accessible to the children at all times with current Infant/Child/Adult training in CPR. Original cards shall be made available upon request. This training shall be approved by the Department of Social Services.

2. Centers with multiple buildings or floors, however, shall have at least one currently trained staff in approved Infant/Child/Adult CPR in each building and on each floor of the center.

3. There shall be a minimum of at least 50 percent of all staff on the premises and accessible to children with current Pediatric First Aid training. Original cards shall be made available upon request. This training shall be approved by the Department of Social Services.

4. Centers with multiple buildings or floors, however, shall have at least one currently trained staff in approved Pediatric First Aid in each building and on each floor of the center.

F. Emergency Procedures. The director shall ensure that there are written procedures for emergencies and evacuation as appropriate for the area in which the center is located such as fire, flood, tornado, hurricane, chemical spill, train derailment, etc., and that staff are trained in these procedures.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5313. Water Activities

A. Provider shall have a written statement if water activities are not provided.

B. The provider shall obtain written authorization signed by the parent in order for the child to participate in any water activity. The statement shall describe all types of water activities provided and the authorization shall be updated at least annually and shall list the child's name, type of water

activity, location of water activity, parent's signature and date.

C. On-site and off-site wading/swimming pool, or other water activities shall require at least two staff or other supervising adults to be trained in Infant/Child/Adult CPR and pediatric first aid. One supervising adult shall be trained in an approved Community Water Safety course. Providers who have wading pools with a depth of less than 2 feet shall not be required to have a staff with Community Water Safety training.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5315. Required Child/Staff Ratios

A. Child/staff ratios are established to ensure the safety of all children.

B. Required staff shall be present in the center to meet the child/staff ratios as indicated below; however there shall always be a minimum of two child care staff present during hours of operation when children are present:

Ages of Children	Child/Staff Ratio
Infants under 12 months	5:1
1 year old	7:1
2 years old	11:1
3 years old	13:1
4 years old	15:1
5 years old	19:1
6 years old and up	23:1

C. An average of the child/staff ratio may be applied to mixed groups of children ages 2, 3, 4, and 5. Ratios for children under 2 or over 5 years old are excluded from averaging. When a mixed group includes children less than 2 years of age, the age of the youngest child determines the ratio for the group to which the youngest child is assigned. When a mixed group includes children 6 years old and older, the ages of the children less than 6 determine the ratio for the group.

D. During naptime, required staffing shall be present in the center to satisfy child/staff ratios.

E. Only those staff members directly involved in child care and supervision shall be considered in assessing child/staff ratio.

F. Child/staff ratio plus one additional adult shall be met for all off-site activities.

G. A designated number of children shall relate daily to a designated staff on a regular and consistent basis.

H. When the nature of a special need or the number of children with special needs warrants added care, the provider shall add sufficient staff as deemed necessary by the bureau to compensate for these needs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5317. Food Service and Nutrition

A. Well-balanced and nourishing meals and snacks shall be provided as specified under the Child Care Food Program of the United States Department of Agriculture (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 contraindicated by special diets.

C. Meals and snacks shall be served at 22 1/2 hour intervals.

D. Current weekly menus for meals and snacks listing specific food items served shall be prominently posted. Menu substitutions shall be recorded on or near the posted menu.

E. Children's food shall be served on individual plates, napkins, paper towels or in cups as appropriate.

F. Providers who do not serve breakfast shall have food available for children arriving in the morning without having eaten this meal.

G. Food shall not be sold to the children. Soft drink vending machines and other food dispensers for personnel use shall be located outside of the children's play areas.

H. Infants shall be held while being bottle-fed. An infant or any child who can hold a bottle shall not be placed in a crib, on a mat, cot, etc. with the bottle unless written permission is obtained from the parent.

I. A bottle shall not be propped at any time.

J. Current written feeding instructions shall be given to the provider by the parent. These instructions from the parent or physician shall be kept on file and followed.

K. Microwave ovens shall not be used for warming infant bottles or infant food.

L. Developmentally appropriate equipment shall be used at mealtimes, such as feeding tables, highchairs, etc.

M. Drinking water shall be available indoors and outdoors to all children. Drinking water shall be offered at least once between meals and snacks to all children. Water given to infants shall be in accordance with written instructions from parents.

N. Perishable food shall be refrigerated at 41° Fahrenheit or below as registered on a thermometer.

O. Children are not allowed to bring food into the center except under the following circumstances.

1. Bottled formula for infants supplied by the parent shall have labeled bottles and labeled caps/covers with the child's name or initials and refrigerated upon arrival.

2. Baby food supplied by the parent shall be in the original unopened container and labeled with the child's name or initials.

3. When a child requires a special diet, a written statement from a medical authority shall be on file.

4. Children with food allergies/intolerance shall have a written statement signed by the parent indicating the specific food allergy/intolerance.

5. When a child requires a modified diet for religious reasons, a written statement to that effect from the child's parent shall be on file.

6. Refreshments for special occasions such as birthday parties and holidays, with prior approval from the director.

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

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

Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5319. Health Service to the Child

A. A provider that gives medication assumes additional responsibility and liability for the safety of the children.

B. Provider shall have a written statement if medication is not administered.

C. Effective January 1, 2003, the staff person administering medication shall be trained in medication administration by a child care health consultant. Documentation of training shall be available for review.

D. No medication of any type, prescription, non-prescription, special medical procedure shall be administered by center staff unless authorized in writing by the parent. Authorization shall include:

1. child's name;
2. name of the medication;
3. date(s) to be administered;
4. dosage;
5. time to be administered;
6. special instructions, if applicable;
7. side effects;
8. signature of parent and date of signature;
9. circumstances for administering as needed medication.

E. Medication or medical procedures to be provided on an as needed basis or maintenance prescription shall be updated as changes occur, or at least every three months by the parent.

F. All medication sent to the center shall be in its original container, shall not have an expired date, and shall be clearly labeled with the child's name to ensure that medication is for individual use only.

G. The provider shall follow any special directions as indicated on the medication bottle, i.e., before or after meals, with food or milk, refrigerate, etc.

H. If medication label reads "to consult physician," a written physician authorization with child's name, date, medication name and dosage must be on file in order to administer the medication in addition to the parental authorization.

I. Medication administration records shall be maintained verifying that the medication was given according to parent's authorization, which includes:

1. the date;
2. time;
3. dosage administered;
4. signature (not initials) of the staff member who gave the medication;
5. phone contact (date and time) with the parent prior to giving the as needed medication.

J. Provider shall not apply topicals (i.e. sunscreen, insect repellent, diaper rash ointment, etc.) without a written one-time authorization signed and dated from the parent, unless changes occur.

K. Upon arrival at the center, each child shall be observed for possible signs of illness, infections, bruises and injuries, etc. When noted, results shall be documented. If none noted, provider shall have a daily documentation that none was observed.

L. Incident of injuries, accidents, illnesses or unusual occurrences in behavior shall be documented. Documentation shall include name of child, date and time of incident, location where incident took place, description of how incident occurred, part of body involved, actions taken. The parent or designated person shall be notified immediately. Documentation shall include time of parental notification and signature of person notifying parent. If no occurrences, provider shall have weekly documentation that none occurred.

M. If symptoms of contagious or infectious disease develop while the child is in care, he/she shall be placed in isolation until a parent or designated person has been consulted. Any child who has had a 100° F oral temperature reading or 101° F rectal temperature reading the last 12 hours is suspect.

N. Excluding Child from Facility Due to Illness

1. A child shall be excluded from the child care facility if any of the following conditions exist:

a. temperature: oral temperature 101° F or greater, rectal temperature 102° F or greater, axillary temperature 102° F or greater, accompanied by behavior changes or other signs of symptoms of illness. The doctor or nurse should be notified;

b. symptoms and signs of possible severe illness such as unusual lethargy (sluggish), uncontrolled coughing, irritability, persistent crying, difficult breathing, wheezing or other unusual signs;

c. uncontrolled diarrhea or increased number of stools, increased stool water and/or decreased from that which is not contained by the diaper, five or more stools in an eight-hour period and/or, blood or mucus in the stool;

d. two or more episodes of vomiting in the previous twenty-four hours;

e. mouth sores with drooling;

f. rash with fever or behavior change;

g. untreated conjunctivitis (pink-eye) with purulent (white or yellow) drainage from eyes;

h. untreated infestations: scabies, head lice or other infestation;

i. tuberculosis: a child is excluded until a health care provider states that the child can attend child care;

j. impetigo: a child is excluded until 24 hours after treatment is initiated;

k. strep throat or other streptococcal infection: a child is excluded until 24 hours after initial antibiotic treatment and cessation of fever;

l. chicken pox: a child is excluded until six days after onset of rash or until all sores have dried and crusted;

m. pertussis: a child is excluded until five days of appropriate antibiotic treatment have been completed;

n. mumps: a child is excluded until nine days after onset of parotid gland swelling;

o. hepatitis A virus: a child is excluded until one week after onset of illness or as directed by a physician and health department when treatment has been administered;

p. measles: a child is excluded until six days after onset of rash;

q. rubella: a child is excluded until six days after onset of rash;

r. unspecified respiratory illness, shingles or other conditions: a child shall be excluded without sufficient documentation from the child's physician;

s. abdominal pain intermittent or persistent.

2. Children experiencing any of the above-mentioned symptoms, signs or conditions should be excluded from child care and should have documentation from the child's physician before returning to child care.

O. With most other illnesses, children have either already exposed others before becoming obviously ill (e.g., colds) or are not contagious one day after beginning treatment (e.g., strep throat, conjunctivitis, impetigo, ringworm, parasites, head lice, and scabies). The waiting periods required after the onset of treatment vary with the disease. Check with your local health department for information on specific diseases. Children who are chronic carriers of viral illnesses such as CMV (cytomegalovirus) and Herpes can and should be admitted to day care centers.

NOTE: A provider shall institute a policy of using universal precautions when activities involve contact with blood or other body fluids (such as diaper changing, cleaning up blood spills, etc.). For additional information refer to the universal precautions as required by Chapter XXI of the State Sanitary Code.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5321. Supervision

A. Children shall be under direct supervision at all times including naptime. Children shall never be left alone in any room or outdoors without a staff present. At naptime, children, excluding infants, may be grouped together with one staff supervising the children sleeping. All children sleeping shall be in the sight of the naptime worker.

B. While on duty with a group of children, child care staff shall devote their entire time in supervision of the children, in meeting the needs of the children, and in participation 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.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5323. Physical Environment

A. Indoor Space Required

1. 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. A child care facility shall be physically separated from any other business or enterprise.

2. 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.

3. For indoor space, the number of children using a room shall be based on the 35 square feet per child requirement except for group activities such as film viewing, parties, dining and sleeping.

4. There shall be provisions indoors 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.

5. An indoor area shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

B. Outdoor Space Required

1. There shall be outdoor play space with a direct exit from the center into the outdoor play yard.

2. 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.

3. 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.

4. Crawlspace and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

5. Areas where there are open cisterns, wells, ditches, fish ponds and swimming pools or other bodies of water shall be made inaccessible to children by fencing.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5325. Furnishings and Equipment

A. There shall be a functional telephone capable of incoming and outgoing calls at all times and readily available at the center. Coin operated telephones or cellular telephones are not acceptable for this purpose.

B. When a center has multiple buildings and a telephone is not located in each building where the children are housed, there shall be a written plan posted in each building for securing emergency help.

C. Appropriate emergency numbers such as fire department, police department, and medical facility shall be prominently posted on or near the telephone.

D. The telephone number for poison control shall be prominently posted on or near the telephone.

E. The center's location address shall be posted with the emergency numbers.

F. All equipment and materials shall be appropriate to the needs and ages of the children enrolled.

G. All play equipment and equipment necessary for the operation of the center shall be maintained in good repair.

H. Play equipment of sufficient quantity and variety for indoor and outdoor use encouraging physical play and quiet play/activities shall be provided which is appropriate to the needs and ages of the children.

I. Trampolines are prohibited

J. Infant walkers are prohibited.

K. There shall be low, open shelves, bins, or other open containers within easy reach of the children for the storage of play materials in each play area.

L. Toy chests with attached lids are prohibited.

M. There shall be individual, labeled space for each child's personal belongings.

N. Chairs and table space of a suitable size shall be available for each child 2 years of age or older.

O. Individual and appropriate sleeping arrangements shall be provided for each child. (State and local health requirements regarding sleeping arrangements shall be met.) Each child shall be provided with a cot, mat, or crib (baby bed) of appropriate size, height, and material, sufficient to insure his/her health and safety. Each infant shall have a crib separated from all other cribs (non-stackable). Playpens shall not be substituted for cribs.

P. Mats may be used only if the area used for napping is carpeted or if the center is centrally heated and cooled. If mats are used, they shall be of adequate size and material to provide for the health and safety of the child.

Q. Each child's sleeping accommodations shall be assigned to him/her on a permanent basis and labeled.

R. Cribs shall have spaces between crib slats of no more than 2 3/8 inches.

S. Infant bed railings shall be in the up and locked position at all times when the child is in the bed.

T. Sheets for covering the cot or mat shall be provided by either the provider or the parent, unless the cots or mats are covered with vinyl or another washable surface.

U. A labeled sheet or blanket shall be provided by either the provider or the parent for covering the child.

V. Cribs, cots, or mats shall be spaced at least 18 inches apart.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5327. Safety Requirements

A. Prescription and over-the-counter medications, poisons, cleaning supplies, harmful chemicals, equipment, tools and any substance with a warning label stating it is harmful or that it should be kept out of the reach of children, shall be locked away from and inaccessible to children. Whether a cabinet or an entire room, the storage area shall be locked.

B. Refrigerated medication shall be stored in a secure container to prevent access by children and avoid contamination of food.

C. Construction, remodeling, or alterations of structures shall be done in such a manner as to prevent hazards or unsafe conditions (fumes, dust, safety hazards).

D. Secure railing shall be provided for flights of more than three steps and for porches more than 3 feet from the ground.

E. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

F. Accordion gates are prohibited unless there is documentation on file that the gate meets requirements as approved by the Office of Public Health, Sanitarian Services.

G. Unused electrical outlets shall be protected by a safety plug cover.

H. Strings and cords (such as those found on window coverings) shall not be within the reach of children.

I. First aid supplies shall be kept on-site and easily accessible to employees, but not within the reach of children.

J. All areas of the center used by the children, including sleep areas, shall be properly heated, cooled, ventilated, and lighted.

K. The center and yard shall be clean and free from hazards.

L. The provider shall prohibit the use of alcohol, tobacco and the use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) on the child care premises. A notice to this effect shall be posted separately.

M. Provider shall post "The Safety Box" newsletter issued by the attorney general's office. Director shall sign and date a statement verifying that all products listed in the newsletter are not present on the daycare premises nor used by the provider for any reason.

N. Fire drills shall be conducted at least once per month. These shall be conducted at various times of the day and night (if nighttime care is provided) and shall be documented. One fire drill every six months shall be held at naptime. Documentation shall include:

1. date and time of drill;
2. number of children present;
3. amount of time to evacuate the center;
4. problems noted during drill and corrections noted;
5. signatures (not initials) of staff present.

O. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the center. Documentation shall include date, time, and signature of staff conducting the visual check and shall be reviewed and signed/initialed by the director.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5329. Off-Site Activities C Non-Vehicular

A. Written parental authorization shall be obtained for all non-vehicular off-site activities. Authorization shall include the name of child, type and location of activity, date and signature of parent, and shall be updated at least annually.

B. Non-vehicular off-site activities shall require at least one staff in attendance and accessible to children at all times with documented current training in Infant/Child/Adult CPR and pediatric first aid.

C. The provider shall maintain a record of all non-vehicular off-site activities to include date, time, list of children, staff, and other adults, and type of activity.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5331. Transportation Plan

A. Providers who transport or arrange transportation of children assume additional responsibility and liability for the safety of the children.

B. If transportation is not provided, there shall be a posted notice to that effect.

C. If transportation is provided for field trips, there shall be a posted notice to that effect.

D. If transportation is provided, on a regular basis, there shall be a posted transportation plan that includes the following:

1. type of transportation provided, i.e. to and from home, to and from school, to and from swimming or dancing lessons, etc.;

2. geographical areas served;

3. time schedule of the services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5333. Transportation Furnished by Center

A. The provider shall maintain a signed parental authorization for each child to leave the center and to be transported in the vehicle. Authorization shall include name of child, type of transportation (i.e., to and from home, to and from school), parent's signature and date.

B. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

C. Only one child shall be restrained in a single safety belt. Note: For additional information regarding state laws, contact Office of Public Safety.

D. At least two adult staff, one of whom may be the driver, shall be in each vehicle, unless the vehicle has a communication device which allows staff to contact emergency personnel, and the child/staff ratio is met in the vehicle. Two adult staff are required at all times when transporting any child under five years of age.

E. At least one staff in each vehicle shall be currently trained in Infant/Child/Adult CPR and pediatric first aid.

F. Children shall be 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.

G. Each child shall safely board or leave the vehicle from the curb side of the street and/or shall be escorted across the street.

H. A designated staff person shall be present when the child is delivered to the center

I. The vehicle shall be maintained in good repair.

J. 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.

K. Children shall not be transported in the back of a pickup truck.

L. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

M. The provider shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles used to transport children.

N. The provider shall maintain in force at all times current commercial liability insurance for the operation of vehicles to ensure medical coverage for children in the event of accident or injury. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, the name of the insurance company, policy number, period of coverage and explanation of the coverage.

O. 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 the child may be released.

P. The driver or attendant shall maintain an attendance record for each trip. The record shall include the drivers name, the date, name of all passengers (children and adults) in the vehicle, the name of the person to whom the child was released and the time of release.

Q. The staff shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked.

R. The vehicle shall have evidence of a current safety inspection.

S. There shall be first aid supplies in the vehicle.

T. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5335. Transportation by Contract

A. The provider shall maintain a contract which is signed by the provider and a representative of the transportation agency outlining circumstances under which transportation will be provided and will include the following.

1. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

2. The vehicle is maintained in good repair and inspected per state law.

3. Only one child shall be restrained in a single safety belt.

4. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

5. There shall be first aid supplies in the vehicle.

6. The use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, fireworks firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

7. Children shall not be transported in the back of a pickup truck.

8. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

9. Drivers shall hold current valid appropriate Louisiana driver's licenses.

10. At least two adults, one of whom may be the driver, shall be in each vehicle, unless the vehicle has a communication device which allows contact with emergency personnel, and the required child/staff ratio is met in the vehicle. Two adults are required at all times when transporting any child under 5 years of age.

11. At least one adult in each vehicle shall be currently trained in Infant/Child/Adult CPR and pediatric first aid.

12. Children shall be 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.

13. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle. A designated staff person shall be present when the child is delivered to the center.

B. 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 the child may be released.

C. The driver or attendant shall maintain an attendance record for each trip. The record shall include the drivers name, the date, name of all passengers (children and adults) in the vehicle, the name of the person to whom the child was released and the time of release.

D. The driver or attendant shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked.

E. Copies of current drivers' licenses, insurance, Infant/Child/Adult CPR cards, Pediatric First Aid cards, master transportation list, daily attendance record and the visual check of the vehicle shall be maintained on file at 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, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5337. Field Trips C Transportation Provided by Center

A. When transportation for field trips is provided by the center, there shall be signed parental authorization for each child to leave the center and to be transported in the vehicle. Authorization shall include the type of vehicle used to

transport children, event, location, child's name, date and time of event, parent's signature and date.

B. At least two staff shall be in attendance and accessible to children with documented current training in Infant/Child/Adult CPR and pediatric first aid on field trips with at least one staff in each vehicle who is currently trained in Infant/Child/Adult CPR and pediatric first aid.

C. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

D. Only one child shall be restrained in a single safety belt.

NOTE: For additional information regarding state laws, contact Office of Public Safety.

E. At least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device which allows staff to contact emergency personnel and child/staff ratio is met in the vehicle. Two adult staff are required at all times when transporting any child under 5 years of age.

F. Children shall be 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.

G. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

H. The vehicle shall be maintained in good repair.

I. The use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children or while on the center sponsored field trip is prohibited.

J. Children shall not be transported in the back of a pickup truck.

K. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

L. Documentation of a valid appropriate Louisiana driver's license for all individuals transporting children.

M. Provider shall maintain in force at all times current commercial liability insurance for the operation of vehicles to ensure medical coverage for children in the event of accident or injury. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The provider is responsible for payment of medical expenses of a child injured while in provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, the name of the insurance company, policy number, period of coverage and explanation of the coverage.

N. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at each destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

O. The vehicle shall have evidence of a current safety inspection.

P. First aid supplies shall be provided for each field trip (at least one kit per trip).

Q. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

R. The provider shall maintain a record of all field trips taken, to include date and destination, list of passengers (children, parents, staff) (going and returning) and method of transportation. A copy of this information shall also be maintained in the center and in each vehicle while the field trip is in progress.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5339. Field Trips C Transportation Provided by Parents

A. The provider shall maintain a signed parental authorization for each child to leave the center and be transported in the vehicle. Authorization shall specify that transportation will be provided by parents, and shall also include child's name, event, location, date and time of event, parent's signature and date.

B. Field trips shall require at least two staff in attendance and accessible to children to have documented current training in Infant/Child/Adult CPR and pediatric first aid.

C. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

D. Only one child shall be restrained in a single safety belt.

E. The provider shall maintain a copy of each parent's valid driver's license and current liability insurance.

F. A planned route shall be provided to each driver and a copy maintained in the center.

G. Children shall be under the direct supervision of an adult at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time.

H. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

I. The provider shall maintain a record of all field trips taken, to include date and destination, list of passengers (children, parents, staff, other adults) (going and returning) and method of transportation. A copy of this information shall also be maintained in the center and in each vehicle while the field trip is in progress.

J. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at each destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

K. The vehicle shall have evidence of a current safety inspection.

L. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

M. First aid supplies (at least one per trip) shall be available for each field trip.

N. The use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or

BB guns (loaded or unloaded) in any vehicle while transporting children or on center sponsored field trip is prohibited.

O. Children shall not be transported in the back of a pickup truck.

P. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5341. Field Trips C Transportation by Contract

A. The provider shall maintain a contract which is signed by the provider and a representative of the transportation agency outlining circumstances under which transportation will be provided and will include the following.

1. Transportation arrangements conform to state laws including seat belts and child restraints.

2. The vehicle shall be maintained in good repair and inspected per state law.

3. Only one child shall be restrained in a single safety belt.

4. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

5. The use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children or on center sponsored field trip is prohibited.

6. All drivers must hold current valid appropriate Louisiana driver's licenses.

7. Children shall not be transported in the back of a pickup truck.

B. Field trips shall require at least two staff in attendance and accessible to children at all times to have documented current training in Infant/Child/Adult CPR and pediatric first aid.

C. At least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device which allows staff to contact emergency personnel, and the required child/staff ratio is met in the vehicle. Two adult staff are required at all times when transporting any child under 5 years of age.

D. At least one staff in each vehicle shall be currently trained in Infant/Child/Adult CPR and pediatric first aid.

E. 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.

F. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

G. There shall be information in the center and each vehicle listing the names of children, parents and staff in each vehicle (going and returning) destination and date.

H. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

I. First aid supplies (at least one per trip) shall be available for each field trip.

J. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at each destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

K. Copies of driver licenses and insurance shall be maintained on file at the center.

L. When transportation for field trips is provided by an outside source, there shall be signed parental authorization for each child to leave the center and to be transported in the vehicle. Authorization shall include the type of vehicle used to transport children, event, location, child's name, date and time of event, parent's signature and date.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

§5443. Care for Children During Nighttime Hours

A. All minimum standards for child care centers apply to care after 9 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

B. In addition, the following standards shall apply.

1. There shall be a designated "Staff-in-Charge" employee who is at least 21 years of age.

2. Adequate staff shall be present in the center to meet the child/staff ratios as indicated in §5315, however, there shall always be a minimum of at least two staff present.

3. Meals shall be served to children who are in the center at the ordinary meal times.

4. Each child shall have a separate, age appropriate bed or cot with mat or mattress covered by a sheet for each child, as well as a covering for each child, (bunk beds are not allowed).

5. There shall be a posted schedule of activities.

6. Evening quiet time activity such as story time, games, and reading shall be provided to each child arriving before bedtime.

7. Physical restraints shall not be used to confine children to bed.

8. Center's entrance and drop off zones shall be well lighted during hours of operation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

Family Impact Statement

In accordance with Section 972 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted the family impact statement regarding the rule proposed for adoption, repeal or amendment.

1. What effect will this rule have on the stability of the family? This proposed rule to revise minimum standards for licensure of Class "A" child day care facilities will have no affect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed rule provides parents with the minimum standards required for Class "A" day care facilities. Parents can use the information in these regulations to assist them in making an informed decision when choosing a day care facility that will educate and supervise their children.

3. What effect will this have on the functioning of the family? This rule is not anticipated to have any affect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no affect on family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? A day care facility adhering to the minimum standards in this proposed rule will be better equipped to improve the behavior and personal responsibility of children in their care.

6. Is the family or local government able to perform the function as contained in this proposed rule? The family or local government is not able to perform the function contained in this proposed rule.

Interested persons may submit written comments within the next 20 days to Thalia Stevenson, Director, Bureau of Licensing, P.O. Box 3078, Baton Rouge. LA 70821-3078.

Public hearings on this proposed rule will be held on Tuesday, May 28, 2002 at Delgado Early Childhood Education Student Life Center, 615 City Park Avenue, New Orleans, LA from 10 a.m. to 12 p.m.; Wednesday, May 29, 2002 at the LaSalle Building, 617 North 3rd Street, Natural Resources Hearing Room, Baton Rouge, LA from 10 a.m. to 12 p.m.; and Thursday, May 30, 2002 at Louisiana United Methodist Children and Family Services, 901 South Vienna, Ruston, LA 71270 from 10 a.m. to 12 p.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at the public hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Gwendolyn P. Hamilton
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Class "A" Child Day Care

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

There will be a minimal cost for printing the new regulations. A total of 3,500 copies of the regulations will be printed at approximately \$1.58 per copy (totaling \$5,530), and a cost of \$2,006 for postage to mail regulations to all currently licensed facilities. The total cost is \$7,536. There are no other implementation costs to state or local governmental units associated with this proposed rule to adopt minimum licensing standards for Class "A" child day care facilities.

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

The Department of Social Services currently collects licensing fees from facilities that are licensed under this category. Depending on the capacity of the facility, the fees range from \$25 for 15 or fewer children up to \$250 for 101 or more children. This policy revision will not affect the amount collected from these facilities.

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

The estimated costs to directly affected persons would be the licensing fee charged, which ranges from \$25 to \$250 depending upon the capacity of the facility. This policy revision will not affect the amount currently collected from these facilities. There will be no costs or economic benefit to other non-governmental groups. This revision only consolidates and makes technical changes to the current minimum standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no impact anticipated on competition or employment.

Thalia Stevenson
Director
0204#069

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT
Department of Treasury
Deferred Compensation Commission

Public Employees Deferred Compensation Plan
(LAC 32:VII.Chapters 1-19)

Editor's Note: This Notice of Intent is being republished to correct a printing error. This proposed rule may be viewed on pages 708-718 of the March 20, 2002 edition of the *Louisiana Register*.

Under the authority of R.S. 42:1301-1308, and §457 of the *Internal Revenue Code* of 1986 as amended, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of the Treasury, Deferred Compensation Commission advertises its intent to amend the Public Employees Deferred Compensation Plan. The proposed amendments have no impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

The State of Louisiana Public Employees Deferred Compensation Plan (the "Plan") was adopted by the Louisiana Deferred Compensation Commission (the commission), effective September 15, 1982. The Plan was established in accordance with R.S. 42:1301-1308, and §457 of the *Internal Revenue Code of 1986*, as amended, for the purpose of providing supplemental retirement income to employees and independent contractors by permitting such individuals to defer a portion of compensation to be invested and distributed in accordance with the terms of the Plan. The Plan was repealed and repromulgated in its entirety in the (volume 24, number 10) October 20, 1998 *Louisiana Register* for codification in *Louisiana Administrative Code* format.

Title 32

GROUP BENEFITS

Part VII. Public Employee Deferred Compensation

Chapter 1. Administration

§101. Definitions

Administrator or Plan Administrator Cthe person, persons or entity appointed by the Louisiana Deferred Compensation Commission to administer the Plan pursuant to LAC 71:VII.103.A, if any.

Age 50 or Older Catch-up Cthe deferred amount described pursuant to LAC 71:VII.303.C.

Beneficiary Cthe person, persons or entities designated by a participant pursuant to LAC 71:VII.301.A.5.
* * *

Compensation Call payments paid by the employer to an employee or independent contractor as remuneration for services rendered, including salaries and fees, and, to the extent permitted by Treasury regulations or other similar guidance, accrued vacation and sick leave pay.
* * *

Includible Compensation C(for purposes of the limitation set forth in LAC 71:VII.303.A), compensation for services performed for the employer as defined in IRC §457(e)(5).
* * *

IRCC the *Internal Revenue Code of 1986*, as amended, or any future United States Internal Revenue law. References herein to specific section numbers shall be deemed to include Treasury regulations thereunder and Internal Revenue Service guidance thereunder and to corresponding provisions of any future United States internal revenue law.
* * *

Limited Catch-Up Cthe deferred amount described in LAC 71:VII.305.A.

Normal Retirement Age C

1. the age designated by a participant, which age shall be between:

a. the earliest date on which such participant is entitled to retire under the public retirement system of which that participant is a member without actuarial reduction in his or her benefit; and

b. age 70 1/2, provided, however, that if a participant continues in the employ of the employer beyond 70 1/2, *normal retirement age* means the age at which the participant severs employment;

2. if the participant is not a member of a defined benefit plan in any public retirement system, the participant's *normal retirement age* may not be earlier than age 50, and may not be later than age 70 1/2;

3. if a participant continues to be employed by employer after attaining age 70 1/2, not having previously elected an alternate *normal retirement age*, the participant's alternate *normal retirement age* shall not be later than the mandatory retirement age, if any, established by the employer, or the age at which the participant actually severs employment with the employer if the employer has no mandatory retirement age.

Participant Can individual who is eligible to defer compensation under the Plan, and has executed an effective

deferral authorization. *Participant* also includes an employee or independent contractor who has severance from employment but has not received a complete distribution of his or her interest in deferred compensation under the Plan.

Plan the State of Louisiana Public Employees Deferred Compensation Plan established by this document and any applicable amendment.

Qualified Domestic Relations Order or *QDRO* as specified in LAC 71:VII.1503.B.

Severance from Employment or Severs Employment

1. *severance* of the participant's employment with the employer. A participant shall be deemed to have severed employment with the employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the participant by the employer. In the case of a participant who is an independent contractor, *severance from employment* shall be deemed to have occurred when:

- a. the participant's contract for services has completely expired and terminated;
- b. there is no foreseeable possibility that the employer shall renew the contract or enter into a new contract for services to be performed by the participant; and
- c. it is not anticipated that the participant shall become an employee of the employer.

2. with respect to an employee, the permanent *severance* of the employment relationship with the employer on account of such employee's:

- a. retirement;
- b. discharge by the employer;
- c. resignation;
- d. layoff; or
- e. in the case of an employee who is an appointed or elected officer, the earlier of:
 - i. the taking of the oath of office of such officer's successor; or
 - ii. the cessation of the receipt of compensation.

3. If an employee incurs a break in service for a period of less than 30 days or transfers among various Louisiana governmental entities, such break or transfer shall not be considered a *severance from employment*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1962 (October 1998), amended LR 28:

§105. Duties of Commission

A.1. - 7. ...

8. appointing an emergency committee comprised of at least three individuals. Applications for a withdrawal of deferred compensation based on an unforeseeable emergency shall be approved or disapproved by such committee.

8.a. - b.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1963 (October 1998), amended LR 28:

Chapter 3. Plan Participation, Options and Requirements

§301. Enrollment in the Plan

A. The following rules apply to compensation deferred under the Plan.

1. A participant may not defer any compensation unless a deferral authorization providing for such deferral has been completed by the participant and accepted by the commission prior to the beginning of such payroll period. With respect to a new employee, compensation will be deferred in the payroll period during which a participant first becomes an employee if a deferral authorization providing for such deferral is executed on or before the first day on which the participant becomes an employee. Any prior employee who was a participant in the Plan and is rehired by employer may resume participation in the Plan by entering into a participation agreement. Unless distributions from the Plan have begun due to that prior severance from employment, however, any deferred commencement date elected by such employee with respect to those prior Plan assets shall be null and void.

2. - 3. ...

4. Notwithstanding LAC 71:VII.301.A.1, to the extent permitted by applicable law, the administrator may establish procedures whereby each employee becomes a participant in the Plan and, as a term or condition of employment, elects to participate in the Plan and consents to the deferral by the employer of a specified amount for any payroll period for which a participation agreement is not in effect. In the event such procedures are in place, a participant may elect to defer a different amount of compensation per payroll period, including zero, by entering into a participation agreement.

5. Beneficiary. Each participant shall initially designate in the participation agreement a beneficiary or beneficiaries to receive any amounts, which may be distributed in the event of the death of the participant prior to the complete distribution of benefits. A participant may change the designation of beneficiaries at any time by filing with the commission a written notice on a form approved by the commission. If no such designation is in effect at the time of participant's death, or if the designated beneficiary does not survive the participant by 30 days, his beneficiary shall be his surviving spouse, if any, and then his estate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:

§303. Deferral Limitations

A. Except as provided in LAC 71:VII.305.A.1-2.a-b, the maximum that may be deferred under the Plan for any taxable year of a participant shall not exceed the lesser of:

1. the applicable dollar amount in effect for the year, as adjusted for the calendar year in accordance with IRC §457(e)(15); or

2. 100 percent of the participant's includible compensation, each reduced by any amount specified in Subsection B of this §303 that taxable year.

B. The deferral limitation shall be reduced by any amount excludable from the participant's gross income attributable to elective deferrals to another eligible deferred compensation plan described in IRC §457(b).

C. A participant who attains age 50 or older by the end of a Plan year and who does not utilize the limited catch-up for such Plan year may make a deferral in excess of the limitation specified in Subsection A.1-2 of this §303, up to the amount specified in and subject to any other requirements under IRC §414(v).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:

§305. Limited Catch-up

A. For one or more of the participant's last three taxable years ending before the taxable year in which normal retirement age under the Plan is attained, the maximum deferral shall be the lesser of:

1. twice the otherwise applicable dollar limit under IRC §457(e)(15) for that taxable year; reduced by any applicable amount specified in LAC 71:VII.303.B; or

2. the sum of:

a. the limitations established for purposes of §303.A of these rules, for such taxable year (determined without regard to this §305); also

b. so much of the limitation established under §303.A of the Plan or established in accordance with IRC §457(b)(2) and the regulations thereunder under an eligible deferred compensation plan sponsored by an entity other than the employer and located in the same state for prior taxable years (beginning after December 31, 1978 and during all or any portion of which the participant was eligible to participate in this Plan) and has not theretofore been used under §§303.A or 305.A hereof or under such other plan (taking into account the limitations under and participation in other eligible deferred compensation plans in accordance with the *Internal Revenue Code*); provided, however, that this §305 shall not apply with respect to any participant who has previously utilized, in whole or in part, the limited catch-up under this Plan or under any other eligible deferred compensation plan (within the meaning of IRC §457 and the regulations thereof).

B. If a participant is not a member of a defined benefit plan in any public retirement system, normal retirement age may not be earlier than age 50, and may not be later than age 70 1/2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:

§307. Participant Modification of Deferral

A. The participant shall be entitled to modify the amount (or percentage) of deferred compensation once each enrollment period with respect to compensation payable no earlier than the payroll period after such modification is entered into by the participant and accepted by the commission. Notwithstanding the above, if a negative election procedure has been implemented pursuant to §301.A.4 of this Chapter, a participant may enter into or modify a participation agreement at any time to provide for no deferral.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

§309. Employer Modification of Deferral

A. The commission shall have the right to modify or disallow the periodic deferral of compensation elected by the participant:

1. in excess of the limitations stated in LAC 71:VII.303.A and 305.A;

2. - 6. ...

B. And to the extent permitted by and in accordance with the *Internal Revenue Code*, the employer or administrator may distribute the amount of a participant's deferral in excess of the distribution limitations stated in LAC 71:VII.301, 303, 305, 307 and 309 notwithstanding the limitations of LAC 71:VII.701.A; provided, however, that the employer and the commission shall have no liability to any participant or beneficiary with respect to the exercise of, or the failure to exercise, the authority provided in this LAC 71:VII.309.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

§311. Revocation

A. A participant may, at any time, revoke his or her deferral authorization by notifying the commission, in writing, on forms acceptable to the commission. Upon the acceptance of such notification, deferrals under the plan shall cease no later than the commencement of the first pay period beginning at least 30 days after acceptance; provided, however, that the commission shall not be responsible for any delay which occurs despite its good faith efforts. In no event shall the revocation of a participant's deferral authorization permit a distribution of deferred compensation, except as provided in §701.A of these rules, and shall be subject to the terms and provisions of the affected investment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

§313. Re-Enrollment

A. A participant who revokes the participation agreement as set forth in §311.A above may execute a new participation agreement to defer compensation payable no earlier than the payroll period after such new participation agreement is executed by the participant and accepted by the commission.

B. A former participant who is rehired after retirement may rejoin the Plan as an active participant unless ineligible to participate under other Plan provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

Chapter 5. Investments

§505. Participant Accounts

A. The commission shall maintain or cause to be maintained one or more individual deferred compensation ledger account or similar individual account(s) for each

participant. Such accounts shall include separate accounts, as necessary, for IRC §457 Deferred Compensation, IRC §457 rollovers, IRA rollovers, other qualified plan and IRC §403(b) plan rollovers, and such other accounts as may be appropriate from time to time for plan administration. At regular intervals established by the commission, each participant's account shall be:

A.4. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

Chapter 7. Distributions

§701. Conditions for Distributions

A. Payments from the participants §457 Deferred Compensation Plan account to the participant or beneficiary shall not be made, or made available, earlier than:

1. the participant's severance from employment pursuant to LAC 71:VII.703.A or death; or

2. the participant's account meets all of the requirements for an in-service *de minimus* distribution pursuant to LAC 71:VII.705.A and B; or

3. the participant incurs an approved unforeseeable emergency pursuant to LAC 71:VII.709.A; or

4. the participant transfers an amount to a defined benefit governmental plan pursuant to LAC 71:VII.705.C; or

5. April 1 of the calendar year following the calendar year in which the participant attains age 70 1/2.

B. Payments from a participant's rollover account(s) may be made at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

§703. Severance from Employment

A. Distributions to a participant shall commence following the date in which the participant severs employment, in a form and manner determined pursuant to LAC 71:VII.713.A, 715.A and 717.A.

B. Upon notice to participants, and subject to LAC 71:VII.701.A., 703.B and 721.A, the administrator may establish procedures under which a participant whose total §457 deferred compensation account balance is less than an amount specified by the administrator (not in excess of \$5,000 or other applicable limit under the *Internal Revenue Code*) will receive a lump sum distribution on the first regular distribution commencement date (as the employer or administrator may establish from time to time) following the participant's severance from employment, notwithstanding any election made by the participant pursuant to LAC 71:VII.721.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

§705. In-Service Distributions

A. Voluntary In-Service Distribution of *De Minimis* Accounts. A participant who is an active employee shall receive a distribution of the total amount payable to the participant under the Plan if the following requirements are met:

1. the portion of the total amount payable to the participant under the Plan does not exceed an amount specified from time to time by the commission (not in excess of \$5,000 or other applicable limit under the *Internal Revenue Code*);

2. the participant has not previously received an in-service distribution of the total amount payable to the participant under the Plan;

3. no amount has been deferred under the Plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

4. the participant elects to receive the distribution.

B. Involuntary In-Service Distribution of *De Minimis* Accounts. Upon notice to participants, and subject to LAC 71:VII.721.A, the commission may establish procedures under which the Plan shall distribute the total amount payable under the Plan to a participant who is an active employee if the following requirements are met:

1. the portion of the total amount payable to the participant under the Plan does not exceed an amount specified from time to time by the commission (not in excess of \$5,000 or other applicable limit under the *Internal Revenue Code*);

2. the participant has not previously received an in-service distribution of the total amount payable to the participant under the Plan; and

3. no amount has been deferred under the Plan with respect to the participant during the two-year period ending on the date of the in-service distribution.

C. Purchase of Defined Benefit Plan Service Credit

1. If a participant is also a participant in a defined benefit governmental plan (as defined in IRC §414(d)), such participant may request the commission to transfer amounts from his or her account for:

a. the purchase of permissive service credit (as defined in IRC §415(n)(3)(A)) under such plan; or

b. a repayment to which IRC §415 does not apply by reason of IRC §415(k)(3).

2. Such transfer requests shall be granted in the sole discretion of the commission, and if granted, shall be made directly to the defined benefit governmental plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

§707. Deferred Commencement Date at Separation from Service

A. Following the date in which the participant severs employment, the participant may select a deferred commencement date for all or a portion of the participant's account balance. If the participant elects to defer the entire account balance, the future commencement date may not be later than April 1 of the calendar year following the calendar year in which the participant attains age 70 1/2.

B. If the participant is an independent contractor:

1. in no event shall distributions commence prior to the conclusion of the 12-month period beginning on the date on which all such participant's contracts to provide services to or on behalf of the employer expire; and

2. in no event shall a distribution payable to such participant pursuant to §703.A of these rules commence if, prior to the conclusion of the 12-month period, the

participant performs services for the employer as an employee or independent contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

§709. Unforeseeable Emergency

A. If a participant has incurred a genuine unforeseeable emergency and no other resources of financial relief are available, the commission may grant, in its sole discretion, a participant's request for a payment from the participant's account. Any payment made under this provision shall be in a lump sum.

1. The commission shall have the right to request and review all pertinent information necessary to assure that hardship withdrawal requests are consistent with the provisions of IRC §457.

2. In no event, however, shall an unforeseeable emergency distribution be made if such hardship may be relieved:

- a. through reimbursement or compensation by insurance or otherwise;
- b. by liquidation of the participant's assets, to the extent the liquidation of the participant's assets would not itself cause a severe financial hardship; or
- c. by cessation of deferrals under this Plan.

3. The amount of any financial hardship benefit shall not exceed the lesser of:

- a. the amount reasonably necessary, as determined by the commission, to satisfy the hardship; or
- b. the amount of the participant's account.

4. Payment of a financial hardship distribution shall result in mandatory suspension of deferrals for a minimum of six months from the date of payment (or such other period as mandated in Treasury regulations).

5. Currently, the following events are not considered unforeseeable emergencies under the Plan:

- a. enrollment of a child in college;
- b. purchase of a house;
- c. purchase or repair of an automobile;
- d. repayment of loans;
- e. payment of income taxes, back taxes, or fines associated with back taxes;
- f. unpaid expenses including rent, utility bills, mortgage payments, or medical bills;
- g. marital separation or divorce; or
- h. bankruptcy (except when bankruptcy resulted directly and solely from illness or casualty loss).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:

§711. Death Benefits

A. Upon the participant's death, the participant's remaining account balance(s) will be distributed to the beneficiary commencing after the administrator receives satisfactory proof of the participant's death (or on the first regular distribution commencement date thereafter as the employer or administrator may establish from time to time), unless prior to such date the beneficiary elects a deferred

commencement date, in a form and manner determined pursuant to LAC 71:VII.713.A and 717.A.

B. If there are two or more beneficiaries, the provisions of this §711 and of §717.A of these rules shall be applied to each beneficiary separately with respect to each beneficiary's share in the participant's account.

C. If the beneficiary dies after beginning to receive benefits but before the entire account balance has been distributed, the remaining account balance shall be paid to the estate of the beneficiary in a lump sum.

D. Under no circumstances shall the commission be liable to the beneficiary for the amount of any payment made in the name of the participant before the commission receives satisfactory proof of the participant's death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:

§713. Payment Options

A. A participant's or beneficiary's election of a payment option must be made at least 30 days prior to the date that the payment of benefits is to commence. If a timely election of a payment option is not made, benefits shall be paid in accordance with §715.A of this Chapter 7. Subject to applicable law and the other provisions of this Plan, distributions may be made in accordance with one of the following payment options:

1. a single lump-sum payment;
2. installment payments for a period of years (payable on a monthly, quarterly, semiannual, or annual basis) which extends no longer than the life expectancy of the participant or beneficiary as permitted under the requirements of IRC §401(a)(9);
3. installment payments for a period of years (payable on a monthly, quarterly, semiannual, or annual basis) automatically adjusted for cost-of-living increases based on the rise in the *Consumer Price Index for All Urban Consumers* (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase shall be made in periodic payment checks beginning the following January;
4. partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years, as described in Subsection A of this §713;
5. annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the participant or for the lifetime of the participant and beneficiary in compliance with IRC §401(a)(9);
6. such other forms of installment payments as may be approved by the commission consistent with the requirements of IRC §401(a)(9).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:

§715. Default Distribution Option

A. In the absence of an effective election by the participant, beneficiary or other payee, as applicable, as to the commencement and/or form of benefits, distributions shall be made in accordance with the applicable

requirements of IRC §§ 401(a)(9) and 457(d), and proposed or final Treasury regulations thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:

§717. Limitations on Distribution Options

A. No distribution option may be selected by a participant or beneficiary under this §717 unless it satisfies the requirements of IRC §§401(a)(9) and 457(d) and proposed or final Treasury regulations thereunder.

B. If installment payments are designated as the method of distribution, the minimum distribution shall be no less than \$100 per check and the payments made annually must be no less than \$600.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:

§719. Taxation of Distributions

A. To the extent required by law, income and other taxes shall be withheld from each benefit payment, and payments shall be reported to the appropriate governmental agency or agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998).

§721. Transfers and Rollovers

A. Transfers to the Plan. If the participant was formerly a participant in an eligible deferred compensation plan maintained by another employer, and if such plan permits the direct transfer of the participant's interest therein to the Plan, then the Plan shall accept assets representing the value of such interest; provided, however, that the participant has separated from service with that former employer and become an employee of employer. Such amounts shall be held, accounted for, administered and otherwise treated in the same manner as compensation deferred by the participant except that such amounts shall not be considered compensation deferred under the Plan in the taxable year of such transfer in determining the maximum deferral under LAC 71:VII.303.A.1-2. The commission may require such documentation from the predecessor plan, as it deems necessary to confirm that such plan is an eligible deferred compensation plan within the meaning of IRC §457, and to assure that transfers are provided under such plan. The commission may refuse to accept a transfer in the form of assets other than cash, unless the commission agrees to hold such other assets under the Plan.

B. In-Service Transfers from the Plan. If a participant separates from service prior to his or her required beginning date, and becomes a participant in an eligible deferred compensation plan of another governmental employer, and provided that payments under this Plan have not begun, such participant may request a transfer of his or her account to the eligible deferred compensation plan of the other employer. Requests for such transfers must be made in writing to the commission and shall be granted in the sole discretion of the commission. If an amount is to be transferred pursuant to this provision, the commission shall transfer such amount

directly to the eligible deferred compensation plan of the other employer. Amounts transferred to another eligible deferred compensation plan shall be treated as distributed from this Plan and this Plan shall have no further responsibility to the participant or any beneficiary with respect to the amount transferred.

C. Rollovers to the Plan

1. The Plan shall accept a rollover contribution on behalf of a Participant or Employee who may become a participant. A *rollover contribution*, for purposes of this Subsection, is an eligible rollover contribution (as defined in IRC §402(f)(2)) from any:

- a. plan qualified under IRC §401(a) or 403(a);
- b. tax-sheltered annuity or custodial account described in IRC §403(b);
- c. individual retirement account or annuity described in IRC §408;
- d. eligible deferred compensation plan described in IRC §457(b).

2. Prior to accepting any rollover contribution, the commission may require that the participant or employee establish that the amount to be rolled over to the Plan is a valid rollover within the meaning of the *Internal Revenue Code*. A participant's rollover contribution shall be held in a separate rollover account or accounts, as the commission shall determine from time to time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:

§723. Eligible Rollover Distributions

A. General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this §723, a distributee may elect, at the time and in the manner prescribed by the employer, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Definitions. For purposes of this §723, the following definitions shall apply:

Eligible Rollover Distribution Can eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for:

- a. a specified period of 10 years or more;
- b. any distribution to the extent such distribution is required under IRC §401(a)(9);
- c. any distribution that is a deemed distribution under the provisions of IRC §72(p);
- d. the portion of any distribution that is not includable in gross income; and any hardship distribution or distribution on account of unforeseeable emergency.

Eligible Retirement Plan Can eligible retirement plan is an individual retirement account described in IRC §408(a), an individual retirement annuity described in IRC §408(b), an annuity plan described in IRC §403(a) that accepts the distributee's eligible rollover distribution, a qualified trust

described in IRC §401(a) (including §401(k)) that accepts the distributee's eligible rollover distribution, a tax-sheltered annuity described in IRC §403(b) that accepts the distributee's eligible rollover distribution, or another eligible deferred compensation plan described in IRC §457(b) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

Distributee includes an employee or former employee, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in IRC §414(p), are distributees with regard to the interest of the spouse or former spouse.

Direct Rollover a payment by the Plan to the eligible retirement plan specified by the distributee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

§725. Elections

A. Elections under this Chapter 7 shall be made in such form and manner as the commission may specify from time to time. To the extent permitted by and in accordance with the *Internal Revenue Code*, any irrevocable elections as to the form or timing of distributions executed prior to January 1, 2002, are hereby revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

§727. Practices and Procedures

A. The commission may adopt practices and procedures applicable to existing and new distribution elections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

Chapter 9. Leave of Absence

§901. Paid and Unpaid Leave of Absence

A. Paid Leave of Absence. If a participant is on an approved leave of absence from the employer with compensation, or on approved leave of absence without compensation that does not constitute a severance from employment within the meaning of IRC §402(d)(4)(A)(iii) which under the employer's current practices is generally a leave of absence without compensation for a period of one year or less, said participant's participation in the Plan may continue.

B. Unpaid Leave of Absence. If a participant is on an approved leave of absence without compensation and such leave of absence continues to such an extent that it becomes a severance from employment within the meaning of IRC §402(e)(4)(A)(iii), said participant shall have severed employment with the employer for purposes of this Plan. Upon termination of leave without pay and return to active status, the participant may execute a new participation agreement to be effective when permitted by LAC 71:VII.313.B of the Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

Chapter 11. Participant Loans

§1101. Authorization of Loans

A. The commission may direct the administrator to make loans to participants on or after the effective date of Treasury regulations or other guidance under IRC §457 and to the extent allowable under and in accordance with IRC §457. Such loans shall be made on the application of the participant in a form approved by the administrator and on such terms and conditions as are set forth in this Chapter 11, provided, however, that the administrator may adopt rules or procedures specifying different loan terms and conditions, if necessary or desirable, to comply with or conform to such Treasury regulations or other guidance and other applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

§1103. Maximum Loan Amount

A. In no event shall any loan made to a participant be in an amount which shall cause the outstanding aggregate balance of all loans made to such participant under this Plan exceed the lesser of:

1. \$50,000, reduced by the excess (if any) of:

a. the highest outstanding balance of loans from the Plan to the participant during the one-year period ending on the day before the date on which the loan is made;

b. over the outstanding balance of loans from the Plan to the participant or the beneficiary on the date on which the loan is made; or

2. one-half of the participant's total amount deferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

§1105. Repayment of Loan

A. Each loan shall mature and be payable, in full and with interest, within five years from the date such loan is made, unless:

1. the loan is used to acquire any dwelling unit that within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the participant; or

2. loan repayments are, at the employer's election, suspended as permitted by IRC §414(u)(4) (with respect to qualified military service).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

§1107. Loan Terms and Conditions

A. In addition to such rules as the administrator may adopt, which rules are hereby incorporated into this Plan by reference, all loans to participants shall comply with the following terms and conditions.

1. Loans shall be available to all participants on a reasonably equivalent basis.

2. Loans shall bear interest at a reasonable rate to be fixed by the administrator based on interest rates currently being charged by commercial lenders for similar loans. The administrator shall not discriminate among participants in the matter of interest rates, but loans granted at different times may bear different interest rates based on prevailing rates at the time.

3. Each loan shall be made against collateral, including the assignment of no more than one-half of the present value of the participant's total amount deferred as security for the aggregate amount of all loans made to such participant, supported by the participant's collateral promissory note for the amount of the loan, including interest.

4. Loan repayments must be made by payroll deduction. In all events, payments of principal and interest must be made at least quarterly and such payments shall be sufficient to amortize the principal and interest payable pursuant to the loan on a substantially level basis.

5. A loan to a participant or beneficiary shall be considered a directed investment option for such participant's account balance.

6. No distribution shall be made to any participant, or to a beneficiary of any such participant, unless and until all unpaid loans, including accrued interest thereon, have been satisfied. If a participant terminates employment with the employer for any reason, the outstanding balance of all loans made to him shall become fully payable and, if not paid within 30 days, any unpaid balance shall be deducted from any benefit payable to the participant or his beneficiary. In the event of default in repayment of a loan or the bankruptcy of a participant who has received a loan, the note will become immediately due and payable, foreclosure on the note and attachment of security will occur, the amount of the outstanding balance of the loan will be treated as a distribution to the participant, and the defaulting participant's accumulated deferrals shall be reduced by the amount of the outstanding balance of the loan (or so much thereof as may be treated as a distribution without violating the requirements of the *Internal Revenue Code*).

7. The loan program under the Plan shall be administered by the administrator in a uniform and nondiscriminatory manner. The administrator shall establish procedures for loans, including procedures for applying for loans, guidelines governing the basis on which loans shall be approved, procedures for determining the appropriate interest rate, the types of collateral which shall be accepted as security, any limitations on the types and amount of loans offered, loan fees and the events which shall constitute default and actions to be taken to collect loans in default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

Chapter 13. Plan Amendment or Termination **§1301. Termination**

A. The commission may at any time terminate this Plan; provided, however, that no termination shall affect the amount of benefits, which at the time of such termination shall have accrued for participants or beneficiaries. Such accrued benefits shall include any compensation deferred before the time of the termination and income thereon accrued to the date of the termination.

B. Upon such termination, each participant in the Plan shall be deemed to have revoked his agreement to defer future compensation as provided in LAC 71:VII.311.A as of the date of such termination. Each participant's full compensation on a non-deferred basis shall be restored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

§1303. Amendments to the Plan

A. The commission may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the amount of benefits which at the time of such amendment shall have accrued for participants or beneficiaries, to the extent of compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment, calculated in accordance with LAC 71:VII.505.A and the terms and conditions of the investment options hereunder; and provided further, that no amendment shall affect the duties and responsibilities of the trustee unless executed by the trustee.

B. Copies of Amendments. The administrator shall provide a copy of any plan amendment to any trustee or custodian and to the issuers of any investment options.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

§1305. Disclaimer

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1971 (October 1998), repealed LR 28:

Editor's Note: Disclaimer text is included in §1505 of these rules.

Chapter 15. Taxes, Nonassignability and Disclaimer **§1501. Tax Treatment of Amounts Deferred**

A. It is intended that pursuant to IRC §457, the amount of deferred compensation shall not be considered current compensation for purposes of federal and state income taxation. This rule shall also apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this Plan shall supplement retirement and death benefits payable under the employer's group insurance and retirement plans, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1971 (October 1998), amended LR 28:

§1503. Nonassignability

A. It is agreed that neither the participant, nor any beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of attempt to assign or transfer, the commission shall have no further liability hereunder, nor shall any unpaid amounts be subject to

attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, or insolvency, except to the extent otherwise required by law.

B. Qualified Domestic Relations Orders approved by the commission shall be administered as follows.

1.a. To the extent required under a final judgment, decree, or order made pursuant to a state domestic relations law, herein referred to as a Qualified Domestic Relations Order (QDRO) which is duly filed upon the commission, any portion of a participant's account may be paid or set aside for payment to an alternate payee.

NOTE: For purposes for this §1503, an alternate payee is a person or persons designated by a domestic relations order who may be a spouse, former spouse, or a child of the participant.

b. Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the alternate payee, and such person(s) shall be entitled to make investment selections with respect thereto in the same manner as the participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the alternate payee making the investment selection.

2. Any amounts so set aside for an alternate payee shall be paid out immediately in a lump sum, unless the QDRO directs a different form of payment or later payment date. Nothing in this §1503.B shall be construed to authorize any amounts to be distributed under the employer's plan at a time or in a form that is not permitted under IRC §457. Any payment made to a person other than the participant pursuant to this §1503.B shall be reduced by required income tax withholding. Such withholding and income tax reporting shall be done under the terms of the *Internal Revenue Code* as amended from time to time.

3. The commission's liability to pay benefits to a participant shall be reduced to the extent that amounts have been paid or set aside for payment to an alternate payee pursuant to this §1503.B. No amount shall be paid or set aside unless the commission, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the participant with respect to these amounts. The participant shall be deemed to have released the commission from any claim with respect to such amounts in any case in which the commission has been notified of or otherwise joined in a proceeding relating to a QDRO, which sets aside a portion of the participant's account for an alternate payee, and the participant fails to obtain an order of the court in the proceeding relieving the employer from the obligation to comply with the QDRO.

4. The commission shall not be obligated to comply with any judgment, decree or order which attempts to require the Plan to violate any plan provision or any provision of §457 of the *Internal Revenue Code*. Neither the commission nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a participant's benefits under the plan unless the full expense of such legal action is borne by the participant. In the event that the participant's action (or inaction) nonetheless causes the commission, its agents or assigns to incur such expense, the amount of the expense may be charged against the participant's account and thereby reduce the commission's obligation to pay benefits to the participant. In the course of

any proceeding relating to divorce, separation, or child support, the commission, its agents and assigns shall be authorized to disclose information relating to the participant's individual account to the participant's spouse, former spouse or child (including the legal representatives of the alternate payee), or to a court.

5. Any Conforming Equitable Distribution Order (CEDO), filed prior to January 2002 may be amended to comply with this §1503.B, pursuant to a Qualified Domestic Relations Orders (QDRO), which is duly filed upon the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

§1505. Disclaimer

A. The commission makes no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any participant, beneficiary, or any other person with respect to:

1. the financial soundness, investment performance, fitness, or suitability (for meeting a participant's objectives, future obligations under the Plan, or any other purpose) of any investment option in which amounts deferred under the Plan are actually invested; or

2. the tax consequences of the Plan to any participant, beneficiary or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

Chapter 17. Employer Participation

§1701. Additional Compensation Deferred

A. Notwithstanding any other provisions of this Plan, the employer may add to the amounts payable to any participant under the Plan additional deferred compensation for services to be rendered by the participant to the employer during a payroll period, provided:

1. the participant has elected to have such additional compensation deferred, invested, and distributed pursuant to this Plan, prior to the payroll period in which the compensation is earned; and

2. such additional compensation deferred, when added to all other compensation deferred under the Plan, does not exceed the maximum deferral permitted by LAC 71:VII.303.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1972 (October 1998), amended LR 28:

Chapter 19. Applicable Terms

§1901. Interpretation

A. Governing Law. This Plan shall be construed under the laws of the state of Louisiana.

B. Section 457. This Plan is intended to be an eligible deferred compensation plan within the meaning of §457 of the *Internal Revenue Code*, and shall be interpreted so as to be consistent with such Section and all regulations promulgated thereunder.

C. Employment Rights. Nothing contained in this Plan shall be deemed to constitute an employment agreement between any participant and the employer and nothing

contained herein shall be deemed to give a participant any right to be retained in the employ of the employer.

D. Days and Dates. Whenever time is expressed in terms of a number of days, the days shall be consecutive calendar days, including weekends and holidays, provided, however, that if the last day of a period occurs on a Saturday, Sunday or other holiday recognized by the employer, the last day of the period shall be deemed to be the following business day.

E. Word Usage. Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.

F. Headings. The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control.

G. Entire Agreement. This Plan document shall constitute the total agreement or contract between the commission and the participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the participant. This Plan and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assigns and on all designated beneficiaries of the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

Family Impact Statement

1. The Effect on the Stability of the Family. None. There will be no impact on the Stability of the family.

2. The Effect of the Authority and Rights of Parents Regarding the education and Supervision of their Children. None. There will be no impact on the Authority and Rights of Parents Regarding the Education and Supervision of their Children.

3. The Effect of the Functioning of the Family. None. There will be no impact on the functioning of the family.

4. The Effect on Family Earnings and Family budget. None. There will be no impact on family earnings and family budget.

5. The Effect on the behavior and Personal Responsibility of Children. None. There will be no impact on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. None. There will be no impact on the ability of the family or a local government to perform the function as contained in the proposed rule.

Interested persons may submit comments to Joseph A. Dionisi, Administrator, Louisiana Deferred Compensation Plan, 2237 South Acadian Thruway, Suite 702, Baton Rouge, LA 70808. Telephone: (225) 926-8082. Fax: (225) 926-4447

Individuals with disabilities who require special service should contact the Louisiana Deferred Compensation Plan office prior to the hearing.

Emery Bares
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Public Employees Deferred Compensation Plan

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

No anticipated costs anticipated to state or local government units.

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

No anticipated effect on revenue collections.

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

No anticipated cost to state. Amended Plan Document would ensure compliance with federal statutes to maintain eligible state deferred compensation plans.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No anticipated effect on competition and employment.

Emery J. Bares
Chairman
0204#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office