

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Horticulture Commission

Application for Examination
and Licensure or Permitting
(LAC 7:XXIX.107 and 119)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, hereby proposes to amend regulations regarding advertisement and solicitation for non-licensed landscape architects or retail florists.

The Rule change to §107 extends the time period for retail florists to complete passage of the retail florist exam and reduces the need for retail florists to retake parts of the exam. The Rule change to §119 limits the use of the word design or designer to licensed landscape architects or retail florists, in order to further delineate the distinction between the professions of landscape contractor and landscape architect.

These rules are enabled by R.S. 3:3801.

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticultural Commission

Chapter 1. Horticulture

§107. Application for Examination and Licensure or Permitting

A. Each applicant must complete the application form prescribed by the commission for the area in the practice of horticulture for which the license or permit is sought.

B. Retail Florist

1. - 2. ...

3. Both phases of the examination for licensure as a retail florist must be successfully completed within three years after successful completion of one phase. In any case where more than three years has elapsed since the applicant successfully completed one phase of the examination, the applicant must apply, and pay the fee required under §109.A.1, to retake the entire examination.

C.2. - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801, R.S. 3:3807, and 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:7 (January 1988), LR 18:249 (March 1992), LR 20:639 (June 1994), LR 23:854 (July 1997), LR 29:

§119. Prohibition

A. - E. ...

F. No licensee, permittee or person engaged in any profession or occupation regulated by the commission shall use the words "design" or "designer" or any form of these words, whether separately or in combination with other words in any advertisement, solicitation or title, or on any

estimate, contract or other document, except for those persons who are licensed as a landscape architect or as a retail florist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:186 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 29:

Family Impact Statement

The proposed amendments to rules LAC 7:XXIX.Chapter 1 regarding advertisement and solicitation for non-licensed landscape architects or retail florists regulations should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

All interested persons may submit written comments on the proposed Rules through November 25, 2002, to Craig Roussel, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. No preamble concerning the proposed rules is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Application for Examination and Licensure or Permitting

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

Neither of these Rule changes will increase costs or savings to state or local governmental units. The Rule change extends the time period for retail florists to complete passage of the retail florist exam and reduces the need for retail florists to retake parts of the exam. The second change limits the use of the word design or designer to licensed landscape architects or retail florists, in order to further delineate the distinction between the professions of landscape contractor and landscape architect.

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

There will be no effect on revenue collections of state and local government units.

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

There will be no costs or economic benefits to the retail florist industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact on competition and employment in the public and private sectors.

Skip Rhorer
Assistant Commissioner
0210#063

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators
Instructional Program Standards (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The change in the Rule changes the name of the Proficient achievement level to the Mastery achievement level for LEAP 21 and GEE 21. This change is required by the No Child Left Behind Act of 2001.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§901. School Approval Standards and Regulations

A. Bulletin 741

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education in LR 27:694-695 (May 2001); LR 27:695-702 (May 2001); LR 27:815-820 (June 2001); LR 28:1936 (September 2002), LR 29:

Instructional Program Standards

Louisiana Educational Assessment Program

1.009.03 Each school system shall participate in the Louisiana Educational Assessment Program.

Performance standards for <i>LEAP for the 21st Century</i> (LEAP 21) and Graduation Exit Examination for the 21 st Century (GEE 21) are equal to the rigor of the National Assessment of Educational Progress (NAEP) performance standards.	
Achievement Level Labels	
Label and Short Description	Policy Definition
Advanced	A student at this level has demonstrated superior performance beyond the mastery level.
Mastery (Exceeding the Standard)	A student at this level has demonstrated competency over challenging subject matter and is well prepared for the next level of schooling.
Basic (Meeting the Standard)	A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.

Approaching Basic (Approaching the Standard)	A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Unsatisfactory	A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling.
District-wide test results, but not scores or rankings of individual students, shall be reported to the local educational governing authority at least once a year at a regularly scheduled local educational governing authority meeting. A school system shall not conduct any program of specific preparation of the students for the assessment program by using the particular test to be administered therein.	

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No
2. Will the proposed rule affect the authority and rights of parents regarding the education and supervision of their children? No
3. Will the proposed rule affect the functioning of the family? No
4. Will the proposed rule affect family earnings and family budget? No
5. Will the proposed rule affect the behavior and personal responsibility of children? No
6. Is the family or a local government able to perform the function as contained in the proposed rule? No

Interested persons may submit written comments until 4:30 p.m., December 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 741C Louisiana Handbook for School Administrators
Instructional Program Standards**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The current rule change added no additional costs (savings) to the state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections at the state or local levels.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There should be no effect on costs and/or economic benefits to directly affected persons in nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There should be no impact on competition and employment.

Marilyn Langley
Deputy Superintendent
Management and Finance
0210#035

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of
School PersonnelC Denial of Certificate
for Criminal Offenses
(LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. The proposed rule change includes language relative to specific criminal offenses that is consistent with the laws requiring background checks. The change adds language requiring a current FBI criminal background check and specifies the evidence to be presented for documentation of rehabilitation.

Title 28

EDUCATION

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 27:825, 828 (June 2001); LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:1727 (August 2002), LR 29:

Denial of Certificates for Criminal Offenses

I. An application for a Louisiana teaching certificate shall be denied if the individual applying for the certificate has been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense whatsoever. (See Attachment 1)

II. For the purposes of this policy:

The term "offense" or "crime" shall include those listed in R.S. 15.587.1(C) and any felony offense whatsoever.

The term "teaching certificate" or "certificate" shall include any license, permit, or certificate issued by the Certification and Higher Education section of the Department of Education.

The term "applicant" shall include any person applying for any permanent, ancillary, provisional or temporary certificate.

The term "convicted" or "conviction" shall include any proceedings in which the accused pleads guilty or no contest and those proceedings that are tried and result in a judgment of guilty.

The term "Department" refers to the Louisiana Department of Education.

The term "Board" refers to the Board of Elementary and Secondary Education as a whole and/or any of its standing committees.

III. Any conviction that results in a suspended sentence pursuant to Articles 893 or 894 of the Louisiana Code of Criminal Procedures, shall be treated as a conviction for the purpose of denial.

Gubernatorial pardons, first offender pardons, and expungement may be used as evidence of rehabilitation, but shall not preclude the denial of a teaching certificate.

IV. When the Department is notified that any applicant has been convicted of a specific crime:

A. The applicant shall be notified by certified mail and by any other appropriate means of notice that his/her certificate has been denied and that a hearing will be conducted by a board committee to consider issuance of Louisiana certification.

B. If the applicant cannot be reached and/or if his/her employment status cannot be determined, denial of the certificate shall proceed as will all other steps in the process outlined in this policy.

C. An applicant may contact the office of the board and request a hearing prior to the date set for the denial consideration by the board. Such hearing will be limited to a determination of the individual's true identity and true conviction status. The applicant shall provide copies of any documents that verify his/her identity and refute the existence of a criminal conviction.

V. Upon official action by the board, any applicant whose certificate has been denied, shall be notified of such action by certified mail. The correspondence shall include instructions for and identification of the date when the individual may apply to the board for issuance of his/her certificate.

VI. If the conviction upon which an applicant's certificate has been denied is reversed, vacated, or set aside such action may be communicated to the board through documentation from the court in which the conviction occurred.

VII. An applicant whose certification has been denied under the provisions of this part may apply for issuance only after the time restriction has been completed.

VIII. Time Restrictions on Applications for Reinstatement:

A. Certificate issuance will never be considered for teachers convicted of the following crimes: 14:30, 14:30.1, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:79.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:82.1, 14:86, 14:89, 14:89.1, 14:93, 14:93.2.1, and 14:286. (See Attachment 1)

B. Issuance of certificates shall not be considered for any final felony conviction until at least 3 years have elapsed from the date of the final conviction.

IX. Procedures for Issuance:

A. An applicant may apply to the board for issuance of his/her teaching certificate after the lapse of time indicated above and under the following conditions:

1. There have been no other arrests or convictions. The applicant must provide a current FBI criminal background check that is clean and clear.

2. There has been successful completion of all conditions and/or requirements of parole and/or probation. The applicant must provide relevant documentation, such as, copies of court records, sentencing recommendations, probation release forms. He/she must also provide written verification from the applicant' parole/probation officer that all requirements have been completed and/or met.

3. There is documented evidence of rehabilitation. The applicant is responsible for providing copies of every requested document. (a, b, and c are required items, d and e are recommended items):

a. Written approval for reinstatement from the local district attorney in which the conviction occurred;

b. Written approval for reinstatement from the local judge from the jurisdiction in which the conviction occurred;

c. Letter of support from local Superintendent;

d. Letter of support from a local community person (business owner, minister, priest, rabbi, city council person, etc.);

e. Other letters of support or written reports that verify the applicant's rehabilitation.

4. The applicant requests a hearing for issuance of certificate.

B. The applicant must:

1. Contact the office of the Board of Elementary and Secondary Education.

2. Provide each item identified above.

C. The board is not required to conduct an issuance hearing and may summarily deny a request for issuance.

D. If the board or its designees decide to conduct an issuance hearing, Board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. The applicant may be represented/accompanied by legal counsel. In addition to the applicant and his/her legal counsel, a maximum of three witnesses may be called to provide testimony regarding the applicant's rehabilitation. Testimony and information considered will be limited to evidence of rehabilitation. The conviction itself will be given full faith and credit. Testimony will not be allowed as to the circumstances surrounding the conviction. The written documentation provided prior to the hearing will also be considered.

E. The committee of the board shall make a recommendation to the full board regarding whether the teaching certificate should be granted, or denied. board staff shall notify the applicant of the board's action.

X. The Board of Elementary and Secondary Education reserves the right to accept or reject any document or testimony offered as evidence of rehabilitation.

The Board of Elementary and Secondary Education reserves the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for a teaching certificate.

Attachment 1

The following crimes are reported under R.S.15:587.1: R.S. 14:30, R.S. 14:30.1, R.S. 14:31, R.S. 14:41 through R.S.14:45, R.S. 14:74, R.S. 14:78, R.S. 14:79.1, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S. 14:89.1, R.S. 14:92,

R.S. 14:93, R.S. 14:93.2.1, R.S. 14:93.3, R.S. 14:106, R.S. 14:282, R.S. 14:286, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or convictions for attempt or conspiracy to commit any of those offenses; Those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and Those under the Federal Criminal Code having analogous elements of criminal and moral turpitude. (Federal Criminal Code provisions are in Title 18 of U.S.C.A.)

Specifically:

- *R.S. 14:30 First degree murder
- *R.S. 14:30.1 Second degree murder
- R.S. 14:31 Manslaughter
- *R.S. 14:41 Rape
- *R.S. 14:42 Aggravated rape
- *R.S. 14:42.1 Forcible rape
- *R.S. 14:43 Simple rape
- *R.S. 14:43.1 Sexual battery
- *R.S. 14:43.2 Aggravated sexual battery
- *R.S. 14:43.3 Oral sexual battery
- *R.S. 14:43.4 Aggravated oral sexual battery
- *R.S. 14:43.5 Intentional exposure to the AIDS virus
- *R.S. 14:44 Aggravated kidnapping
- *R.S. 14:44.1 Second degree kidnapping
- *R.S. 14:45 Simple kidnapping
- R.S. 14:74 Criminal neglect of family
- *R.S. 14:78 Incest
- *R.S. 14:79.1 Criminal abandonment
- *R.S. 14:80 Carnal knowledge of a juvenile
- *R.S. 14:81 Indecent behavior with a juvenile
- *R.S. 14:81.1 Pornography involving juveniles
- *R.S. 14:81.2 Molestation of a juvenile
- R.S. 14:82 Prostitution
- *R.S. 14:82.1 Prostitution; persons under seventeen; additional offenses
- R.S. 14:83 Soliciting for prostitutes
- R.S. 14:83.1 Inciting prostitution
- R.S. 14:83.2 Promoting prostitution
- R.S. 14:83.3 Prostitution by massage
- R.S. 14:83.4 Massage; sexual content prohibit
- R.S. 14:84 Pandering
- R.S. 14:85 Letting premises for prostitution
- R.S. 14:85.1 Letting premises for obscenity
- *R.S. 14:86 Enticing persons into prostitution
- *R.S. 14:89 Crime against nature
- *R.S. 14:89.1 Aggravated crime against nature
- R.S. 14:92 Contributing to the delinquency of juveniles
- *R.S. 14:93 Cruelty to juveniles
- *R.S. 14:93.2.1 Child desertion
- R.S. 14:93.3 Cruelty to the infirm
- R.S. 14:106 Obscenity
- R.S. 14:282 Operation of places of prostitution prohibited
- *R.S. 14:286 Sale of minor children
- R.S. 40:966(A) Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; Manufacture; distribution

- R.S. 40:967(A) Prohibited acts; Schedule II, penalties; Manufacture; distribution
- R.S. 40:968(A) Prohibited acts--Schedule III; penalties; Manufacturedistribution
- R.S. 40:969(A) Prohibited acts--Schedule IV; penalties; Manufacture; distribution
- R.S. 40:970(A) Prohibited acts--Schedule V; penalties; Manufacture; distribution

*Reinstatement will never be considered for crimes marked with an asterisk.

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Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No
2. Will the proposed rule affect the authority and rights or parents regarding the education and supervision of their children? No
3. Will the proposed rule affect the functioning of the family? No
4. Will the proposed rule affect family earnings and family budget? No
5. Will the proposed rule affect the behavior and personal responsibility of children? No
6. Is the family or a local government able to perform the function as contained in the proposed rule? No

Interested persons may submit written comments until 4:30 p.m., December 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Denial of Certificate for Criminal Offenses

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. The proposed rule change includes language relative to specific criminal offenses that is consistent with the laws requiring background checks. The change adds language requiring a current FBI criminal background check and specifies the evidence to be presented for documentation of rehabilitation.

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

This policy will have no effect on revenue collections.

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

This policy specifies that any person who applies for a teaching certificate and has been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense whatsoever would be denied such certificate. The policy provides for due process and

specifies the procedures for consideration of possible certificate issuance after the time restriction has been completed.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0210#023

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC New Certification Structure for Educational Leadership (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. The proposed New Certification Structure for Educational Leadership will consolidate under one certification area the current certifications in Elementary Principal, Secondary Principal, Supervisor of Instruction, Supervisor of Child Welfare and Attendance, and Parish or City School Superintendent. This action will require that, as recommended by the Blue Ribbon Commission, all colleges and universities redesign their graduate programs in Educational Leadership. These newly redesigned programs are scheduled to be implemented July 1, 2004. It is expected that based on this implementation date that the first program completers will graduate from these programs in Summer 2006. Therefore, it will be necessary to gradually phase out the four certification areas (Elementary Principal, Secondary Principal, Supervisor of Instruction, Supervisor of Child Welfare and Attendance, and Parish or City School Superintendent) currently in place over time beginning July 1, 2006.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825, 828 (June 2001), LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:0000 (August 2002), LR 29:

Proposed New Certification Structure for Educational Leadership

Effective Date: July 1, 2003

Overarching Requirements	
<p>All graduate degree preparation programs, assessments, and continuing learning units shall be aligned with the following state and national standards:</p> <ul style="list-style-type: none"> • the <i>Standards for School Principals in Louisiana</i>; • the Interstate School Leaders Licensure Consortium (ISLLC) <i>Standards for School Leaders</i>; and • the Educational Leadership Constituent Council (ELCC) <i>Standards for Advanced Programs in Educational Leadership</i>, the standards used by the National Council for the Accreditation of Colleges of Teacher Evaluation (NCATE) for university program reviews. 	
Teacher Leader Endorsement (optional)	
<p>Teachers who hold a valid Type B or Level 2 or higher Louisiana teaching certificate may add a Teacher Leader Endorsement to their teaching certificate by completing a state-approved Teacher Leader Institute that:</p> <ul style="list-style-type: none"> ○ Requires, at minimum, the equivalent of six graduate hours (90 contact hours); ○ Includes a combination of face-to-face and field-based professional development activities which may include the use of a cohort approach; ○ Provides support from and monitoring by current outstanding administrators serving as mentors and/or facilitators; ○ Includes an electronic component (on-line and/or compressed video) to ensure each participant's access to key resources and to build a statewide network of qualified administrator candidates that could include the development of cohorts; and, ○ Requires the development and presentation of a culminating portfolio that provides evidence that knowledge gained and skills acquired are aligned with national and state leader standards. <p><u>Requirements for Renewal of the Teacher Leader Endorsement:</u></p> <p>Teacher Leader Endorsement requires completion of a minimum of 150 continuing learning units of professional development every five years that are consistent with the leader's Individual Professional Growth Plan (IPGP).</p>	
Certification Levels	
<p>All educational leaders will progress through two levels of educational leader certification. An additional level of certification (Superintendent) is required for employment as a local district superintendent.</p>	
<p style="text-align: center;">Educational Leader Certificate–Level 1</p> <p>All candidates for school and district educational leadership positions (e.g., assistant principal, principal, parish or city school supervisor of instruction, supervisor of child welfare and attendance, or comparable school or district leader positions) must meet the following requirements in order to receive an entry-level certificate in educational leadership.</p> <p>Candidates for Level 1 Educational Leader Certification shall meet the following criteria.</p> <ol style="list-style-type: none"> 1. Hold or be eligible to hold a valid Louisiana Type A or Level 3 Teaching Certificate. 2. Have completed a graduate degree preparation program in the area of educational leadership from or recognized by a regionally accredited institution of higher education. These programs must be aligned with: <ul style="list-style-type: none"> • the <i>Standards for School Principals in Louisiana</i>; • the Interstate School Leaders Licensure Consortium (ISLLC) <i>Standards for School Leaders</i>; and • the Educational Leadership Constituent Council (ELCC) <i>Standards for Advanced Programs in Educational Leadership</i>. 3. Earn a passing score on the <i>School Leaders Licensure Assessment (SLLA)</i> in accordance with state requirements. 4. Persons who have met the requirements of Items 1-3 above are eligible for a Level 1 Educational Leader Certificate. Upon employment as a school or district educational leader, an individual with Level 1 Educational Leader certificate must enroll in the two-year Educational Leader Induction Program under the direction of the Louisiana Department of Education. 5. Any individual, with Level 1 Educational Leader certificate, employed as a school or district educational leader shall have three years to complete the two-year Educational Leader Induction Program under the direction of the Louisiana Department of Education. Failure to fulfill this requirement within the three-year timeline will result in revocation of the Level 1 Educational Leader certificate. 	<p style="text-align: center;">Educational Leader–Level 1 (Alternative Path)</p> <p>Candidates for school and district educational leadership positions (e.g., assistant principal, principal, parish or city school supervisor of instruction, supervisor of child welfare and attendance, or comparable school or district leader positions) may meet the following requirements in order to receive an entry-level certificate in educational leadership as an alternative to the traditional Educational Leader Certificate Level 1.</p> <p>The alternative path to Level 1 Certification is for those persons who hold a Master's Degree in Education and are seeking to add an Educational Leader Certification.</p> <p><u>Candidates for the Alternative Path to Level 1 Educational Leader Certification shall meet the following criteria.</u></p> <ol style="list-style-type: none"> 1. Hold or be eligible to hold a valid Louisiana Type A or Level 3 Teaching Certificate. 2. Have previously completed a graduate degree program from a regionally accredited institution of higher education or a degree equivalent to a graduate degree recognized by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), Office of International Education Services. 3. Earn a passing score on the <i>School Leaders Licensure Assessment (SLLA)</i> in accordance with state requirements. 4. Persons who have met the requirements of Items 1-3 above are eligible for a Level 1 Educational Leader Certificate. Upon employment as a school or district educational leader, an individual with Level 1 Educational Leader certificate must enroll in the two-year Educational Leader Induction Program under the direction of the Louisiana Department of Education. 5. Any individual, with Level 1 Educational Leader certificate, employed as a school or district educational leader shall have three years to complete the two-year Educational Leader Induction Program under the direction of the Louisiana Department of Education. Failure to fulfill this requirement within the three-year timeline will result in revocation of the Level 1 Educational Leader certificate.
Educational Leader Certificate Level 2	
<p>All candidates must meet the following requirements in order to receive a five-year renewable professional certificate in educational leadership.</p> <p><u>Candidates for initial Level 2 Educational Leader Certification shall meet the following criteria</u></p> <ol style="list-style-type: none"> 1. Hold a valid Level 1 Educational Leader Certificate. 2. Complete the two-year induction program under the guidance of a mentor trained in accordance with standards set by the Louisiana Department of Education and outlined in Bulletin 741, <i>Louisiana Handbook for School Administrators</i>. The induction period begins upon the individual's first full-time administrative appointment (whether permanent or acting) as an assistant principal, principal, parish or city school supervisor of instruction, supervisor of child welfare and attendance, or comparable school or district leader position; and, is to be completed within a three year period. 3. Earn a passing score on the ISLLC <i>School Leader Portfolio Assessment</i>, in accordance with state requirements. <p><u>Requirement for Renewal of the Level 2 Educational Leader Certificate.</u></p> <p>Level 2 Educational Leaders must complete a minimum of 150 continuing learning units of professional development over a five-year time period that are consistent with the leader's Individual Professional Growth Plan (IPGP) and includes updating the educational leader portfolio to renew the certificate.</p>	

Educational Leader Certificate C Level 3 (Superintendent)

All candidates must meet the following requirements in order to receive a five-year Level 3 Educational Leader Certificate to become a Superintendent. The five-year certification period is activated with the candidate's first full-time appointment as Superintendent.

Candidates for initial Level 3 (Superintendent) Educational Leader Certification must meet the following criteria

1. Hold a valid Louisiana Level 2 Educational Leader Certificate.
2. Have had 5 years of successful administrative or management experience in education at the level of principal or above.
3. Earn a passing score on the *School Superintendent Assessment (SSA)* in keeping with state requirements.

Requirement for Renewal of the Level 3 Educational Leader Certificate

Level 3 Educational Leaders must complete a minimum of 150 continuing learning units of professional development over a five-year time period that are consistent with the leader's Individual Professional Growth Plan (IPGP) and includes updating the educational leader portfolio to renew the certificate.

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule effect the stability of the family? No
2. Will the proposed rule effect the authority and rights of parents regarding the education and supervision of their children? No
3. Will the proposed rule effect the functioning of the family? No
4. Will the proposed rule effect family earnings and family budget? No
5. Will the proposed rule effect the behavior and personal responsibility of children? No
6. Is the family or a local government able to perform the function as contained in the proposed rule? No

Interested persons may submit written comments until 4:30 p.m., December 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 746C Louisiana Standards for State Certification of School PersonnelC New Certification Structure for Educational Leadership**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no estimated implementation costs or savings to state or local governmental units.
- 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. The registration and test fees for the assessments required by the new certification structure are collected by the private testing company, Educational Testing Service, that owns and administers these assessments.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Individuals seeking the Level 1 Educational Leader Certification would have to pay a \$35 registration fee and a \$400 test fee for the School Leaders Licensure Assessment which is required for initial certification in the new structure.

Individuals seeking to move from Level 2 to Level 3 of the Education Leader Certification would have to pay a \$35 registration fee and a \$225 test fee for the School Superintendent Assessment which is required for Level 3 certification in the new structure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is not estimated effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0210#033

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Suspension, Revocation, and Reinstatement of Certificates for Criminal Offenses (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. The proposed rule change includes language relative to specific criminal offenses which is consistent with the laws requiring background checks. In addition, the change outlines specific procedures for reinstatement of certificates, the required evidence of rehabilitation, and graduated time lines for convictions rendered at various times in the past.

Title 28 EDUCATION

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§903. Teacher Certification Standards and Regulations
A. Bulletin 746**

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825, 828 (June 2001), LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:1727 (August 2002), LR 29:

Suspension, Revocation, and Reinstatement of Certificates for Criminal Offenses

I. A Louisiana teaching certificate shall be suspended and revoked if the individual holding the certificate has been convicted of any offense listed in R.S. 15:587.1.C or any felony offense whatsoever. (See Attachment 1)

II. For the purposes of this policy:

The term "offense" or "crime" shall include those listed in R.S. 15.587.1.C and any felony offense whatsoever.

The term "teaching certificate" or "certificate" shall include any license, permit, or certificate issued by the Certification and Higher Education section of the Department of Education.

The term "teacher" shall include any person holding any permanent, ancillary, or temporary teaching certificate.

The term "applicant" shall include any person applying for any permanent, ancillary, provisional or temporary certificate.

The term "convicted" or "conviction" shall include any proceedings in which the accused pleads guilty or no contest and those proceedings that are tried and result in a judgment of guilty.

The term "Department" refers to the Louisiana Department of Education.

The term "Board" refers to the Board of Elementary and Secondary Education as a whole and/or any of its standing committees.

III. Any conviction that results in a suspended sentence pursuant to Articles 893 or 894 of the Louisiana Code of Criminal Procedures, shall be treated as a conviction for the purposes of suspension and/or revocation.

Gubernatorial pardons, first offender pardons, and expungement may be used as evidence of rehabilitation, but shall not preclude suspension and/or revocation of a teaching certificate.

IV. When the Department is notified that any teacher has been convicted of a specific crime:

A. Department staff shall attempt to contact the teacher to inform him/her that the Department has information regarding a criminal conviction and is proceeding under this policy to suspend the certificate.

B. The teacher shall have 10 working days from the date of notification to provide verification that he/she has not been convicted of a criminal offense. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence.

C. If the Department determines that there is evidence that a teacher has been convicted of a criminal offense, that teacher's certificate shall be suspended. The Board, the teacher, and the employing school system shall be notified that the teacher's certificate has been suspended pending official Board action.

D. The teacher shall be notified by certified mail and by any other appropriate means of notice that his/her certificate has been suspended and that a hearing will be conducted by the Board to consider revocation. Such hearing will be limited to a determination of the individual's true identity and true conviction status. The teacher shall provide copies of any documents that verify his/her identity and refute the existence of a criminal conviction.

E. If the teacher cannot be reached and/or if his/her employment status cannot be determined, suspension of the certificate shall proceed as will all other steps in the process outlined in this policy.

V. Upon official action by the Board, any teacher whose certificate has been revoked, shall be notified of such action by certified mail. The correspondence shall include instructions for and identification of the date when the individual may apply to the Board for reinstatement of his/her certificate.

VI. If the conviction upon which a teacher's certificate has been suspended and/or revoked is reversed, vacated, or set aside, such action may be communicated to the Board through documentation from the court in which the conviction occurred. The Board may receive such information and order immediate reinstatement of the teacher's certificate.

VII. Time Restrictions on Applications for Reinstatement:

A. Reinstatement will never be considered for teachers convicted of the following crimes: 14:30, 14:30.1, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:79.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:82.1, 14:86, 14:89, 14:89.1, 14:93, 14:93.2.1, and 14:286. (See Attachment 1)

B. Reinstatements of certificates shall not be considered for any final felony conviction until at least 3 years have elapsed from the date of the final conviction.

C. For other final convictions rendered 4 to 6 years prior to revocation, reinstatement will not be considered for at least 2 years from the date of revocation or voluntary forfeiture of the certificate, whichever is earlier.

D. For other final convictions rendered 7 to 9 years prior to revocation, reinstatement will not be considered for at least 1 year from the date of revocation or voluntary forfeiture of the certificate, whichever is earlier.

E. For other final convictions rendered more than 9 years prior, a teacher may apply immediately for reinstatement.

VIII. Procedures for Reinstatement:

A. An applicant may apply to the Board for reinstatement of his/her teaching certificate after the lapse of time indicated above and under the following conditions:

1. There have been no other arrests or convictions. The applicant must provide a current FBI criminal history background check that is clean and clear.

2. There has been successful completion of all conditions/requirements of parole and/or probation. The applicant must provide relevant documentation, such as, copies of court records, sentencing recommendations, and probation release forms. He/she must also provide written verification from the applicant's parole/probation officer that all requirements have been completed and/or met.

3. There is documented evidence of rehabilitation. The applicant is responsible for providing copies of every requested document (a, b, & c are required items, d & e are recommended items):

a. Written approval for reinstatement from the local district attorney in which the conviction occurred;

b. Written approval for reinstatement from the local judge from the jurisdiction in which the conviction occurred;

c. Letter of support from the local Superintendent;

d. Letter of support from a local community person (business owner, minister, priest, rabbi, city council person, etc.);

e. Other letters of support or written reports that verify the applicant's rehabilitation.

4. The applicant requests a reinstatement hearing.

B. The applicant must:

1. Contact the office of the Board of Elementary and Secondary Education.

2. Provide each item identified above.

C. The Board is not required to conduct a reinstatement hearing and may summarily deny a request for reinstatement.

D. If the Board or its designees decide to conduct a reinstatement hearing, Board staff shall notify the applicant of a date, time, and place when a committee of the Board shall consider the applicant's request. The applicant may be represented/accompanied by legal counsel. In addition to the applicant and his/her legal counsel, a maximum of three witnesses may be called to provide testimony regarding the applicant's rehabilitation. Testimony and information considered will be limited to evidence of rehabilitation. The conviction itself will be given full faith and credit. Testimony will not be allowed as to the circumstances surrounding the conviction. The written documentation provided prior to the hearing will also be considered.

E. The committee of the Board shall make a recommendation to the full Board regarding whether the applicant's teaching certificate should be reinstated, suspended for an additional period of time, or remain revoked. Board staff shall notify the applicant of the Board's action.

IX. The Board of Elementary and Secondary Education reserves the right to accept or reject any document or testimony offered as evidence of rehabilitation.

The Board of Elementary and Secondary Education reserves the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for reinstatement of a teaching certificate.

Attachment 1

The following crimes are reported under R.S.15:587.1: R.S. 14:30, R.S. 14:30.1, R.S. 14:31, R.S. 14:41 through R.S.14:45, R.S. 14:74, R.S. 14:78, R.S. 14:79.1, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S. 4:89.1, R.S. 14:92, R.S. 14:93, R.S. 14:93.2.1, R.S. 14:93.3, R.S. 14:106, R.S. 14:282, R.S. 14:286, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or convictions for attempt or conspiracy to commit any of those offenses; Those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and Those under the Federal Criminal Code having analogous elements of criminal and moral turpitude. (Federal Criminal Code provisions are in Title 18 of U.S.C.A.)

Specifically:

- *R.S. 14:30 First degree murder
- *R.S. 14:30.1 Second degree murder
- R.S. 14:31 Manslaughter

- *R.S. 14:41 Rape
 - *R.S. 14:42 Aggravated rape
 - *R.S. 14:42.1 Forcible rape
 - *R.S. 14:43 Simple rape
 - *R.S. 14:43.1 Sexual battery
 - *R.S. 14:43.2 Aggravated sexual battery
 - *R.S. 14:43.3 Oral sexual battery
 - *R.S. 14:43.4 Aggravated oral sexual battery
 - *R.S. 14:43.5 Intentional exposure to the AIDS virus
 - *R.S. 14:44 Aggravated kidnaping
 - *R.S. 14:44.1 Second degree kidnaping
 - *R.S. 14:45 Simple kidnaping
 - R.S. 14:74 Criminal neglect of family
 - *R.S. 14:78 Incest
 - *R.S. 14:79.1 Criminal abandonment
 - *R.S. 14:80 Carnal knowledge of a juvenile
 - *R.S. 14:81 Indecent behavior with a juvenile
 - *R.S. 14:81.1 Pornography involving juveniles
 - *R.S. 14:81.2 Molestation of a juvenile
 - R.S. 14:82 Prostitution
 - *R.S. 14:82.1 Prostitution; persons under 17; additional offenses
 - R.S. 14:83 Soliciting for prostitutes
 - R.S. 14:83.1 Inciting prostitution
 - R.S. 14:83.2 Promoting prostitution
 - R.S. 14:83.3 Prostitution by massage
 - R.S. 14:83.4 Massage; sexual content prohibited
 - R.S. 14:84 Pandering
 - R.S. 14:85 Letting premises for prostitution
 - R.S. 14:85.1 Letting premises for obscenity
 - *R.S. 14:86 Enticing persons into prostitution
 - *R.S. 14:89 Crime against nature
 - *R.S. 14:89.1 Aggravated crime against nature
 - R.S. 14:92 Contributing to the delinquency of juveniles
 - *R.S. 14:93 Cruelty to juveniles
 - *R.S. 14:93.2.1 Child desertion
 - R.S. 14:93.3 Cruelty to the infirm
 - R.S. 14:106 Obscenity
 - R.S. 14:282 Operation of places of prostitution prohibited
 - *R.S. 14:286 Sale of minor children
 - R.S. 40:966(A) Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; Manufacture; distribution
 - R.S. 40:967(A) Prohibited acts; Schedule II, penalties; Manufacture; distribution
 - R.S. 40:968(A) Prohibited acts; Schedule III; penalties; Manufacture; distribution
 - R.S. 40:969(A) Prohibited acts; Schedule IV; penalties; Manufacture; distribution
 - R.S. 40:970(A) Prohibited acts; Schedule V; penalties; Manufacture; distribution
- *Reinstatement will never be considered for crimes marked with an asterisk.

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted,

amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No

2. Will the proposed rule affect the authority and rights of parents regarding the education and supervision of their children? No

3. Will the proposed rule affect the functioning of the family? No

4. Will the proposed rule affect family earnings and family budget? No

5. Will the proposed rule affect the behavior and personal responsibility of children? No

6. Is the family or a local government able to perform the function as contained in the proposed rule? No

Interested persons may submit written comments until 4:30 p.m., December 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Suspension, Revocation, and Reinstatement of Certificates for Criminal Offenses**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. The proposed rule change includes language relative to specific criminal offenses that is consistent with the laws requiring background checks. In addition, the change outlines specific procedures for reinstatement of certificates, the required evidence of rehabilitation, and graduated time lines for convictions rendered at various times in the past.

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

This policy will have no effect on revenue collections.

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

This policy requires that any person who holds a teaching certificate and has been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense whatsoever would be required to follow the prescribed procedures for consideration of certificate reinstatement, if reinstatement is possible, after suspension and revocation of the certificate.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management & Finance
0210#024

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1566C Guidelines for Pupil Progression
(LAC 28:XXXIX.503, 505, and 1301)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 1566, *Guidelines for Pupil Progression*, referenced in LAC 28:I.907.A. The rule changes eliminate the waiver for students with disabilities participating in on-level testing and change the name of out-of-level testing to LEAP Alternative Assessment-B (LAA-B). The criteria for placement in LAA-B remains the same as required for out-of-level testing. The rule changes one of the accountability labels from "Proficient" to "Mastery" in order to meet the mandates of the federal No Child Left Behind legislation.

Title 28

EDUCATION

Part XXXIX. Bulletin 1566C Guidelines for Pupil

Progression

Chapter 5. Place Policies; State Requirements

§503. Regular Placement

A. - A.1.b.ii.(a)(iii). ...

(iv). Waiver for students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA). LEAP Alternate Assessment (LAA and LAA-B) Students with disabilities who participate in the LEAP Alternate Assessment (LAA) or LEAP Alternate Assessment B (LAA-B) shall have promotion decisions determined by the SBLC.

A.1.b.ii.(a)(v). - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:

§505. Progression—Students Participating in LEAP Alternate Assessment (LAA) or LEAP Alternate Assessment B (LAA-B)

A. Students with disabilities who participate in the LEAP alternate assessment (LAA) or LEAP Alternate Assessment (LAA-B) shall have promotion decisions determined by the School Building Level Committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999), amended LR 26:1433 (July 2000), LR 27:188 (February 2001), LR 27:1683 (October 2001), LR 29:

Chapter 13. Appendix B

§1301. LEAP for the 21st Century, High Stakes Testing Policy

A. - A.3.b. ...

c. Students with disabilities who participate in LEAP Alternate Assessment (LAA) or LEAP Alternate Assessment B (LAA-B), are not eligible to attend the LEAP 21 summer remediation programs.

3.d. - 6.a. ...

i. The local school system (LEA) may override the State policy for students scoring at the Unsatisfactory level in English language arts or mathematics if the student scores at the Mastery or Advanced level in the other provided that:

(a). - (c). ...

b. Waiver for Students with Disabilities Eligible under the Individuals with Disabilities Education Act (IDEA)

i. LEAP Alternate Assessment (LAA and LAA-B)

(a). Students with disabilities who participate in the LEAP Alternate Assessment (LAA) or LEAP Alternate Assessment B (LAA-B) shall have promotion decisions determined by the SBLC.

A.6.b.i.(a).(i). - B.3.b. ...

c. Students with disabilities who participate in LEAP Alternate Assessment (LAA) or LEAP Alternate Assessment B (LAA-B) are not eligible to attend the LEAP 21 summer remediation programs.

d. LEAs are encouraged to offer remediation services to students who score at the *Approaching Basic* level.

B.4. - B.8.a. ...

i. The local school system (LEA) may override the State policy for students scoring at the *Unsatisfactory* level in English or mathematics if the student scores at the *Mastery* or *Advanced* level in the other provided that

ii. - iv. ...

b. Waiver for Students with Disabilities Eligible under the Individuals with Disabilities Education Act (IDEA)

i. ...

(a) LEAP Alternate Assessment (LAA and LAA-B)

(i). Students with disabilities who participate in the LEAP Alternate Assessment (LAA) or Alternate Assessment B (LAA-B) shall have promotion decisions determined by the SBLC.

8.b.i.(b). - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 27:1683 (October 2001), LR 28:1189 (June 2002), LR 29:

Interested persons may submit comments until 4:30 p.m., December 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1566C Guidelines for Pupil Progression

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

There is no additional cost or savings to state or local governmental units as a result of this proposed Rule change.

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

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

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

School systems personnel, students with disabilities and the general public will be affected by the policies in Bulletin 1566 because of better accountability and a more informed public.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
0210#022

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1794C State Textbook Adoption Policy
and Procedure Manual
(LAC 28:XXXIII.305, 311, 503, 507, and 701)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 1794, *State Textbook Adoption Policy and Procedure Manual*, referenced in LAC 28:1.919.A and LAC Part XXXIII. Bulletin 1794 is being revised to provide clarity regarding the state textbook adoption process. New and revised sections address the issues of local adoption, free items provided by publishers, contact and interaction between publisher representatives and local school employees, and publisher participation in the state textbook caravan.

Title 28

EDUCATION

Part XXXIII. Bulletin 1794C State Textbook Adoption Policy and Procedure Manual

§ 305. Textbooks and Materials of Instruction

A. - C. ...

1. Each school district shall make a formal adoption of textbooks within six months from the date of state-level approval by the State Board of Elementary and Secondary Education (SBESE). (Refer to Chapter 5, Local School System Responsibilities)

2. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 26:992 (May 2000), LR 29:

§311. Invitation Circular Letter

A. - G. ...

H. Any items designated as "free" by publishers must also be submitted on the appropriate "LT Submission" form(s). Publishers may modify their free offerings by providing a written explanation and a detailed listing of items to be added to their original submission to the Department of Education within 60 days of the original due date. Any additions or offers of free materials or services made to local school systems verbally or in writing that are not included on forms submitted to the Department will be considered a violation and may cause the publisher to be disqualified.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 26:995 (May 2000); LR 29:

§503. Formal Adoption (see also Bulletin 741, 1.070.03)

A. School systems shall make a formal adoption of textbooks according to the state adoption cycle within six months from the date of formal approval by the State Board of Elementary and Secondary Education (SBESE).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 26:998; LR 29:

§507. Local Adoption Procedures

A. - E.3 ...

4. Prior to the completion of the State Textbook Caravan, any publisher initiated communication with local schools and school systems must be coordinated through the Parish/City Textbook Supervisor or the appropriate Curriculum Supervisor. Publishers may not initiate direct contacts with principals, teachers, or schools until after the completion of the State Textbook Caravan.

F. - F.6. ...

7. The "piloting" of new materials in any school or school system prior to official review by the State Textbook Adoption Committee and final approval by the SBESE is prohibited. Publishers are not to offer school-wide copies or classroom sets of any item or material on a trial or pilot basis.

G. - G.2. ...

3. Local school system officials shall not solicit or accept any free material, item, or service other than those included on official bid submission forms and officially received by the Department of Education. (See Section 311.)

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 26:998 (May 2000), LR 29:

§701. Requirements for Publishers' Participation in State Textbook Adoption

A. - H. ...

I. Publishers shall not contact teachers, principals, or other school system employees for the purpose of providing meals, materials, or any other free items in conjunction with a preview or overview of new materials, at any time during the school year in which an adoption cycle begins or ends. Such awareness sessions or any similar activities are strictly prohibited.

J. Publishers who have materials recommended by the State Committee and approved by the SBESE shall participate in the State Textbook Caravan.

K. Publishers shall not offer or provide any free material, item, or service other than those included on official bid submission forms and properly forwarded to the Department of Education. (See Section 311.)

L. The "piloting" of new materials in any school or school system prior to official review by the State Textbook Adoption Committee and final approval by the SBESE is prohibited. Publishers are not to offer school-wide copies or classroom sets of any item or material on a trial or pilot basis.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 26:1002, LR 29:

Interested persons may submit written comments until 4:30 p.m., December 9, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1794C State Textbook Adoption Policy and Procedure Manual

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

The estimated implementation cost for this rule change is \$1,350.00 (for printing and postage).

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

This rule change should have no effect on state or local revenue collections.

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

There is no anticipated cost or economic benefit to any person or non-governmental group.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0210#034

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Naturally Dystrophic Waters Performance-Based Standards (LAC 33:IX.1105 and 1109)(WQ046)

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 Water Quality regulations, LAC 33:IX.1105 and 1109 (WQ046).

The Rule is intended to modify the process by which waters of the state are characterized as naturally dystrophic and to make consistent the process by which site-specific water quality standards are set for naturally dystrophic waters. EPA has encouraged the department to use performance-based standards as described in the preamble noticed in the *Federal Register* on April 27, 2000 (Volume 65, Number 82), *EPA Review and Approval of State and Tribal Water Quality Standards* (40 CFR Part 131). The department is now proposing to adopt performance-based standards to characterize and set water quality standards for naturally dystrophic waters of the state.

This action proposes to replace the language in LAC 33:IX.1109.C.3.a to cite the scientific methodology that the department will use to characterize and set criteria for naturally dystrophic waters. The methodology that is referenced in the proposed Rule change will be included in the Water Quality Management Plan/Continuing Planning Process, Volume 9, *Water Quality Standards Documentation and Implementation*, and is subject to the public review process. The Water Quality Management Plan/Continuing Planning Process, Volume 9, *Water Quality Standards Documentation and Implementation* is being created and publicly noticed in conjunction with this rulemaking. (A copy of the proposed Volume 9 can be obtained with the proposed Rule.) The language in LAC 33:IX.1109.C.3.b is proposed to be deleted. EPA will have the opportunity to ensure that technical issues are adequately addressed when the state adopts the performance-based standards. The state will no longer need to obtain separate approval from EPA for criteria derived through an approved performance-based approach.

The language from the current rule regarding wastewater discharge (LAC 33:IX.1109.C.3.c-d) that is proposed to be deleted in this action will be modified and moved to the Water Quality Management Plan/Continuing Planning Process, Volume 3, Section 2, *Permitting Guidance Document for Implementing the Louisiana Surface Water Quality Standards, Application of Numerical Standards and Use Attainability*. This document is available at <http://www.deq.state.la.us/permits/permitguide-wqmp.pdf>. This change to the Water Quality Management Plan/Continuing Planning Process is also being publicly noticed in conjunction with this rulemaking.

LAC 33:IX.1109.C contains excepted use categories of water bodies, including naturally dystrophic waters. EPA has encouraged the department to adopt criteria associated with the excepted use categories. The department has been

gathering data on a site-specific basis to support appropriate criteria changes on naturally dystrophic waters that protect the contact recreation and fish and wildlife propagation uses on these waters. The department now has enough data from site-specific Use Attainability Analyses conducted in accordance with state and federal regulations to support the adoption of an updated and consistent scientific methodology by which to set appropriate criteria for naturally dystrophic waters. Adoption of this methodology will streamline the time-consuming Use Attainability Analysis process the department currently uses to adjust criteria and continue to protect the contact recreation and fish and wildlife propagation uses on these waters as required by the Clean Water Act. The basis and rationale for the proposed rule and Water Quality Management Plan/Continuing Planning Process revisions are to streamline the procedure to evaluate naturally dystrophic waters while maintaining scientific validity.

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 IX. Water Quality

Chapter 11. Surface Water Quality Standards

§1105. Definitions

* * *

Naturally Dystrophic Waters—waters which are stained with organic material and which are low in dissolved oxygen because of natural conditions.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:

§1109. Policy

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception categories, compliance schedules and variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. - C.2.d. ...

3. Naturally Dystrophic Waters. *Naturally dystrophic waters* are defined in LAC 33:IX.1105. Water bodies shall be designated as *naturally dystrophic waters* and assigned appropriate water quality criteria according to the procedure in the department's current Water Quality Management Plan/Continuing Planning Process.

D. - I.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:746 (October 1984), amended LR 15:738 (September 1989), LR 17:264

(March 1991), LR 17:966 (October 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2546 (November 2000), LR 29:

A public hearing on this proposed Rule and the Water Quality Management Plan/Continuing Planning Process revisions will be held on November 25, 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 Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation and Water Quality Management Plan/Continuing Planning Process revisions. Persons commenting should reference this proposed regulation by WQ046. Such comments must be received no later than December 2, 2002, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of WQ046.

This proposed regulation and the proposed Water Quality Management Plan/Continuing Planning Process, Volume 9, *Water Quality Standards Documentation and Implementation* are 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; 1823 Highway 546, West Monroe, LA 71292; 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; 111 New Center Drive, 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: Naturally Dystrophic Waters
Performance-Based Standards**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
No effect of this proposed Rule on state or local governmental expenditures is expected.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No effect on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No costs and/or economic benefits to directly affected persons or nongovernmental groups are anticipated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated.

James H. Brent, Ph.D.
Assistant Secretary
0210#084

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Radiographer Trainee Requirements
(LAC 33:XV.503, 575, 578, 579, and 590)(RP031)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Radiation Protection regulations, LAC 33:XV.503, 575, 578, 579, and 590 (Log #RP031).

The proposed Rule revises requirements for radiographer trainees, removes the term radiographer assistant, and adds a new requirement for reciprocity of radiographers. Persons who currently hold radiographer trainee positions will no longer be required to move up to the next level of licensed radiographer in order to retain their job as a permanent radiographer trainee. Trainees will continue to work under the supervision of a licensed radiographer instructor. By establishing a permanent trainee series for industrial radiographers, industrial radiography companies will be allowed to retain experienced employees at the trainee level who do not desire to move up to the next level of licensed radiographer or who are unable to qualify as a licensed radiographer. The proposed Rule recognizes the importance of retaining experienced employees at the trainee level that benefits both the employee and the employer while providing no less protection of public health and the environment. Retaining experienced trainees, rather than continually hiring new trainees, saves in hiring and training costs for the employer and is beneficial to protection of public health and the environment. The basis and rationale for this Rule are to establish a permanent trainee level in the industrial radiographer field.

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

Title 33

ENVIRONMENTAL QUALITY

Part XV. Radiation Protection

**Chapter 5. Radiation Safety Requirements for
Industrial Radiographic Operations**

§503. Definitions

A. As used in this Chapter, the following definitions apply.

* * *

Radiographer Assistant Crepealed.

Radiographer Trainee Any individual who has satisfied the conditions of LAC 33:XV.575.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2581 (November 2000), LR 26:2772 (December 2000), LR 27:1231 (August 2001), LR 29:

Subchapter B. Personal Radiation Safety Requirements for Radiographers

§575. Training and Testing

A. No licensee or registrant shall permit any individual to act as a radiographer, as defined in this Chapter, until such individual completes the following requirements.

1. The individual shall be instructed by a licensed instructor for at least 40 hours in the subjects outlined in Appendix A of this Chapter. The course of instruction must be approved by the department prior to the time of instruction by submitting documentation of instructor licensure and course description.

a. The department must be notified by the licensee at least two weeks prior to presentation of the course.

b. The department must be notified of the cancellation of the course at least 24 hours prior to its scheduled time of presentation.

2. The individual shall complete on-the-job training supervised by one or more radiographer instructors.

a. The instructor shall be authorized on the license or registration certificate.

b. The on-the-job training shall include at least:

i. 200 hours of active participation in radioactive materials industrial radiography operations for an individual to perform industrial radiography utilizing radioactive materials; and/or

ii. 120 hours of active participation in x-ray industrial radiography operations for an individual to perform industrial radiography utilizing x-rays.

c. The hours of on-the-job training do not include safety meetings or classroom training or the use of a cabinet x-ray unit.

d. The current Form DRC-20, available from the department or the departmental website, www.deq.state.la.us, must be submitted to the Office of Environmental Services, Permits Division documenting the on-the-job training.

3. The individual shall receive copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4 and 10, appropriate license, and the licensee's or registrant's operating and emergency procedures.

4. The individual shall demonstrate competence in accordance with Paragraphs A.5 and 6 of this Section to use the sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments that may be employed in his assignment.

5. The individual shall successfully complete a company-specific written examination and field test

covering the subjects listed in Paragraphs A.3 and 4 of this Section.

6. The individual shall successfully complete, within the last five years, a radiation safety examination administered by the department, another agreement state, the U.S. Nuclear Regulatory Commission, or the American Society of Non-Destructive Testing (ASNT). The examination must be successfully completed at least once every five years.

7. The individual shall have in his or her possession a valid radiographer I.D. card issued by the department, another agreement state, the U.S. Nuclear Regulatory Commission, or the American Society of Non-Destructive Testing (ASNT).

B. No licensee or registrant shall permit any individual to act as a radiographer trainee, as defined in this Chapter, until such individual completes the following requirements.

1. The requirements of Paragraph A.1 of this Section shall be met.

2. The individual shall complete on-the-job training supervised by one or more radiographer instructors.

a. The instructor shall be authorized on the license or registration certificate.

b. The on-the-job training, as part of a three-person crew composed of an instructor, a radiographer, and the radiographer trainee applicant, shall include at least:

i. 40 hours of active participation in radioactive materials industrial radiography operations for an individual to perform industrial radiography utilizing radioactive materials; and/or

ii. 40 hours of active participation in x-ray industrial radiography operations for an individual to perform industrial radiography utilizing x-rays.

c. The hours of on-the-job training do not include safety meetings or classroom training or the use of a cabinet x-ray unit.

3. The individual shall receive copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4 and 10, appropriate license, and the licensee's or registrant's operating and emergency procedures.

4. The individual shall demonstrate competence to use the sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments that may be employed in his assignment.

5. The individual shall successfully complete a company-specific written examination and field test covering the subjects listed in Paragraphs B.3 and 4 of this Section.

6. The current Form DRC-20, available from the department or the departmental website, www.deq.state.la.us, must be submitted to the Office of Environmental Services, Permits Division documenting the on-the-job training, instruction in the subjects outlined in Appendix A in this Chapter, and successful completion of a company-specific written examination.

7. The individual shall have in his or her possession, a valid radiographer trainee I.D. card issued by the department or equivalent certification recognized by another agreement state or the U.S. Nuclear Regulatory Commission.

8. Each radiographer trainee I.D. card is valid for a five-year period, unless revoked or suspended in accordance with LAC 33:XV.579.

C. Each licensee or registrant shall maintain, for inspection by the department, until disposition is authorized by the department, the following records for each radiographer and radiographer trainee.

1. Records of Training and Certification. The records must include radiographer certification documents and verification of certification status, copies of written tests, dates and results of oral tests and field examinations, and the names of individuals conducting and receiving the oral and field examinations.

2. Records of Annual Refresher Safety Training and Quarterly Inspections of Job Performance. The records must list the topics discussed during the refresher safety training, the dates the annual refresher safety training was conducted, and names of the instructors and attendees. For inspections of job performance, the records must also include a list showing the items checked and any noncompliance observed by the radiation safety officer or designee.

D. Each licensee or registrant shall conduct a program of internal audits to ensure that the Radiation Protection Regulations (LAC 33:XV), Louisiana radioactive material license conditions, and the licensee's or registrant's operating and emergency procedures are followed by each radiographer and radiographer trainee. Each radiographer and radiographer trainee shall be audited at quarterly intervals. Records of internal audits shall be maintained for review by the department for two consecutive years from the date of the audit.

E. The licensee or registrant shall provide annual refresher safety training to all radiographers and radiographer trainees at intervals not to exceed 12 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 20:999 (September 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 27:1235 (August 2001), LR 28:1951 (September 2002), LR 29:

§578. Reciprocity

A. - A.1. ...

2. the requirements and procedures for certification in the state of jurisdiction issuing the certification afford the same or comparable certification standards as those afforded by LAC 33:XV.575;

3. the applicant presents the certification to the Office of Environmental Services, Permits Division prior to entry into Louisiana; and

4. no escalated enforcement action is pending with the Nuclear Regulatory Commission or in any other state.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 29:

§579. Identification (I.D.) Cards for Radiographers or Radiographer Trainees

A. Issuance

1. An I.D. card shall be issued to each person who successfully completes the requirements of LAC 33:XV.575.A or B.

2. A radiographer I.D. card shall contain the radiographer's photograph. The department will take the photograph at the time the examination is administered. The radiographer trainee I.D. card does not require a photograph.

3. An I.D. card remains the property of the state of Louisiana and may be revoked or suspended under the provisions of this Section.

A.4. - B. ...

C. Renewal of a Radiographer I.D. Card

1. Applications for examination to renew an I.D. card shall be filed in accordance with LAC 33:XV.575.A.

2. The examination for renewal of an I.D. card shall be administered in accordance with LAC 33:XV.575.

3. A renewal I.D. card shall be issued in accordance with this Section.

D. Renewal of a Radiographer Trainee I.D. Card

1. Applications for a renewal radiographer trainee I.D. card shall be filed in accordance with LAC 33:XV.575.B.

2. A renewal I.D. card shall be issued in accordance with this Section.

E. Revocation or Suspension of an I.D. Card

1. Any radiographer or radiographer trainee who violates these rules may be required to show cause at a formal hearing why his or her I.D. card should not be revoked or suspended in accordance with these regulations.

2. When a department order has been issued for an industrial radiographer or radiographer trainee to cease and desist from the use of sources of radiation or the department revokes or suspends his or her I.D. card, the industrial radiographer or radiographer trainee shall surrender the I.D. card to the department until the order is changed or the suspension expires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 29:

Subchapter C. Precautionary Procedures in Radiographic Operations

§590. Specific Requirements for Radiographic Personnel Performing Industrial Radiography

A. - C. ...

D. No individual other than a radiographer or a radiographer trainee who is under the personal supervision of a radiographer instructor shall manipulate controls or operate equipment used in industrial radiographic operations. The radiographer trainee shall also be under the personal supervision of a radiographer instructor when using radiographic exposure devices, associated equipment, or a sealed source or while conducting radiation surveys required by LAC 33:XV.587 to determine that the sealed source has returned to its shielded position or the radiation machine is off after an exposure. The personal supervision must include:

1. the radiographer instructor's physical presence at the site where the sources of radiation are being used;
2. the availability of the radiographer instructor to give immediate assistance if required; and
3. the radiographer instructor's direct observation of the trainee's performance of the operations referred to in this Section.

E. ...

1. has met the requirements of LAC 33:XV.575.A;

E.2. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 27:1237 (August 2001), LR 28:1952 (September 2002), LR 29:

A public hearing will be held on November 25, 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 Lynn Wilbanks 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 RP031. Such comments must be received no later than December 2, 2002, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by email to lynnw@deq.state.la.us. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of RP031.

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; 1823 Highway 546, West Monroe, LA 71292; 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; 111 New Center Drive, 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: Radiographer Trainee Requirements

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

There will be no implementation costs to state or local governmental units.

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

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

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

Radiographer trainees will be positively impacted since they will no longer be required to become licensed radiographers within a specified period of time in order to retain their jobs as radiographer trainees. Industrial radiography companies will also be impacted since establishing a permanent trainee series for industrial radiographers will allow them to retain experienced employees at the apprentice level who do not desire to move up to the next level of licensed radiographer or who are unable to qualify as a licensed radiographer. The estimated cost to industrial radiography companies to replace and train an employee as a radiographer trainee is estimated to be approximately \$1,600. The proposed regulation also requires that radiographer trainees who lose their department-issued card pay a small fee for a replacement card.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

All companies and persons in the industry will be equally impacted. Persons who currently hold radiographer trainee positions will no longer be required to move up to the next level of licensed radiographer in order to retain their job as a radiographer trainee. Trainees will continue to work under the supervision of a licensed radiographer instructor.

James H. Brent, Ph.D.
Assistant Secretary
0210#083

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Board of Architectural Examiners

Architects (LAC 46:I.Chapters 1-21)

Under the authority of the Architects Licensing Law, R.S. 37:141 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana State Board of Architectural Examiners has initiated procedures to amend its rules contained in LAC 46:I.Chapters 1-21.

The amendments are primarily housekeeping revisions of existing board rules intended to bring the rules up to date. The amendments restructure and renumber the existing board rules, while repealing other sections. By virtue of these amendments, the following sections of the existing board rules are being renumbered: §§401-415 become §§501-515; §501 becomes §701; §507 becomes §703; §511 becomes §705; §§701-703 become §§901-903; §§901-905 become §§1101-1105; §§1101-1123 become §§1301-1321; §§1301-1335 become §§1501-1533; §§1501-1505 become §§1701-1705; §§1701-1703 become §§1901-1903; §§1901-1919 become §§2101-2119, and §§2101-2103 become §§2301-2303. The following sections of the existing board rules are being repealed: §503, §505, §509, §703.B and C, §705 and §1333. The proposed amendments have no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part I. Architects

Chapter 1. General Provisions

§101. Authority

A. Under the authority of R.S. 37:144 and in accordance with the provisions of R.S. 49:950 et. seq., the Board of Architectural Examiners adopted the following.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 10:737 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§103. Rule Making Process

A. The Louisiana State Board of Architectural Examiners operates pursuant to these rules, adopted under the authority of R.S. 1950, Title 37, Chapter 3 as amended.

B. For purposes of these rules, the term *architect* means a person who is technically and legally qualified to practice architecture in Louisiana including a professional architectural corporation certified by the board pursuant to the provisions of R.S. 12:1086 et seq., an architectural-engineering corporation certified by the board pursuant to the provisions of R.S. 12:1171 et seq., and a limited liability company certified by the board pursuant to the provisions of R.S. 12:1301 et seq. The term "board" means the Louisiana State Board of Architectural Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:737 (October 1984), amended by the Department of Economic Development, Board of Architectural Examiners, LR 20:995 (September 1994), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 3. Organization

§301. Executive Director

A. The name and address of the person designated by the board upon whom service of process may be served in judicial procedures against the board is the executive director at the address of the official place of business of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:737 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§303. Officers

A. The board shall elect a president and a secretary, each to hold office until their successors shall have been elected. The term of office shall be for one year beginning the first day of January the ensuing year.

B. The president shall preside at all meetings; appoint all committees; sign all certificates of registration issued; sign or authorize by signature stamp all checks with the executive director; and perform all other duties pertaining to his office.

C. The secretary shall, with the assistance of such executive and clerical help as may be required:

a. be the official custodian of the records of the board and of the seal of the board and see that the seal of the board is affixed to all appropriate documents;

b. sign, with the chairman, certificates of licensure; and

c. sign the minutes of the board meetings after the minutes have been approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), amended LR 10:737 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:

§305. Other Personnel

A. The board may employ such executive, stenographic, and office assistance, including an executive director, as is necessary, and shall rent office space as necessary to house the staff and records.

B. The board shall employ an executive director who shall have possession on behalf of the secretary of all the official records of the board and who may, under the supervision of the board, perform such administrative and ministerial duties as the board authorizes.

C. In discharging its responsibilities, the board may engage private counsel, or, as prescribed in law, utilize the services of the attorney general. The board may also employ such accountants, auditors, investigators, and professionals as it deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:738 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:

§307. Meetings

A. There shall be at least four regular meetings each year. If the executive director or the president decide additional meetings are necessary, a special meeting may be called by due notification of all members of the board. A special meeting of the board shall be called by the president upon the request of any two members by giving at least a ten-day written notice to each member of the time and place of such meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), amended LR 10:738 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§309. Minutes

A. The minutes of all meetings shall be prepared by the executive director and signed by the secretary and the president at the next regular meeting. As soon as the minutes are prepared, the executive director shall mail them to the membership for their comments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333

(September 1978), repromulgated LR 10:737 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:

§311. Conduct of Meetings

A. Unless required otherwise, by law or by these rules, *Robert's Rules of Order* shall be used in the conduct of business by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), repromulgated LR 10:736 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§313. Quorum

A. Four members of the board constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:738 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:

§315. Official Records

A. Among other official records required by law, or by rules of other agencies in support of law, there shall be kept in the board offices accurate and current records including, but not limited to:

1. minutes of all meetings of the board;
2. the name and registration number of all persons to whom certificates of registration are issued, the last known address of all registrants, and all current renewals effected through annual registrations;
3. an individual file for each registrant containing the original application, relevant verification and evaluation data, examination dates, grades, and date of original registration;
4. alleged violations and any revocation, rescission and suspension of licenses; and
5. a system of record keeping correctly and currently indicating funds budgeted, spent, and remaining, as well as projections of appropriate requests for consideration in budget development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:738 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:

§317. National Council of Architectural Registration Boards

A. The board shall maintain membership in the National Council of Architectural Registration Boards (NCARB) and its regional conference. Up-to-date information on the examinations and policies adopted from time to time by NCARB shall be reported to the board regularly.

B. The board will cooperate with NCARB in furnishing transcripts of records and rendering assistance in establishing uniform standards of professional qualification throughout the jurisdiction of NCARB.

C. Effective February 24, 1989, out of the funds of the board each board member shall be compensated at a rate of \$75 for each day in attending board meetings and hearings,

attending NCARB regional and national meetings, issuing certificates and licenses, necessary travel, and discharging other duties, responsibilities, and powers of the board. In addition, out of said funds each board member, the executive director, and the board attorney shall be reimbursed reasonable and necessary travel, meals, lodging, clerical, and other incidental expenses incurred while performing the duties, responsibilities, and powers of the boards, including but not limited to performing the aforesaid specific activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), amended LR 10:738 (October 1984), LR 12:760 (November 1986), amended by the Department of Economic Development, Board of Architectural Examiners, LR 15:732 (September 1989), amended by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 5. Election of Nominees to Fill Vacancy

§501. Vacancy

A. This chapter concerns the election of the three nominees to be submitted to the governor for the filling of a vacancy on the board of one or more of the five architectural members to be appointed by the governor pursuant to R.S. 37:142.B. This rule shall be applicable whether the vacancy occurs as a result of withdrawal, disability, death, completion of the term of appointment, or any other reason. This rule shall not be applicable to the board members selected by the governor pursuant to R.S. 37:142.C or D.

B. If a vacancy occurs, or is about to occur, the executive director shall publish notice thereof in the official journal of the state for a period of not less than ten calendar days. The published notice need not appear more than three times during the ten day period. The published notice shall identify the district where the vacancy has occurred and state that any licensed architect domiciled in that district desiring to fill that vacancy shall send a letter by certified mail to the director of the board indicating his or her intent to be a candidate, which letter shall be accompanied by a curriculum vitae and shall certify that, if elected, the architect will serve. The deadline for receipt of the certified letter shall be at least 20 calendar days subsequent to the publication of the last notice appearing in the official journal of the state. Confirmation of receipt shall be the sole responsibility of the candidate.

C. The board shall also provide notice of any vacancy to anyone who has requested same by certified mail within 90 days of the occurrence thereof. However, any failure to provide such notice shall not effect the results of any election conducted to fill the vacancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§503. Waiver of Election

A. If three or fewer eligible architects from any district seek nomination, no election shall be held in that district, and the names of those three or fewer candidates shall be submitted to the governor without any further board action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§505. Ballots

A. If an election is necessary, an official ballot and an official return envelope shall be mailed to each licensed architect residing in Louisiana. The ballot shall contain the names of the candidates printed in alphabetical order for each district, the date for the return of the ballots, and any other information or instructions the board believes may be helpful in the election process. Biographical information may be attached to the ballot.

B. If the ballot mailed by board is lost, misplaced or not received, an architect desiring to vote may request from the board a substitute or replacement ballot. This substitute or replacement ballot may be used in the election, provided the requirements of §507.C are satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§507. Voting

A. All licensed architects residing in Louisiana shall have the right to vote in the election of nominees to fill the vacancy for any district. If nominees are being elected for more than one district, a licensed architect may choose to vote in one or more but less than all district elections, and no ballot shall be voided for that reason. However, any ballot containing more than three votes or fewer than three votes for candidates in any one district will be voided in its entirety. No write-in candidates will be allowed, and any ballot containing a vote for a write-in candidate will be voided in its entirety.

B. Ballots shall be returned in the official return envelopes provided by the board to the board office in Baton Rouge. The voting architect shall sign and provide his or her license number in the upper left-hand corner of the return envelope.

C. The ballot shall not be valid unless the signature and license number appear on the return envelope, and the return envelope is received by the board office on or before the deadline. Ballots returned in an envelope other than the official return envelope provided by the board shall not be voided for that reason, provided the signature and license number of the voting architect appear on the return envelope, and the return envelope is received by the board office on or before the deadline.

D. The deadline for returning the ballots will be fixed by the president and will be at least 14 calendar days after the ballots are mailed to all licensed architects. Ballots received after the deadline shall not be counted.

E. Upon receipt, each return envelope shall be stamped by the board office showing the date received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§509. Tabulation

A. Within 14 calendar days of the deadline for receipt of ballots, tellers appointed by the president, including at least one board member, shall meet at the board office for the purpose of tabulating the ballots. Following a determination that each return envelope contains the required signature and license number, and was timely received, the tellers shall

open and count all ballots properly prepared. The executive director will notify the governor and the candidates of the results.

B. Alternatively, when in the discretion of the president the manual tabulating of the ballots by tellers in accordance with the preceding paragraph would be burdensome, or for some other reason should be performed by an outside person, the president may refer the entire tabulating of the ballots, or any part thereof, to an accounting firm, data processing company, or other such qualified person in addition to one board member. The outside person may use such clerical or other assistance, including whatever assistance from the board staff, as he or she deems necessary. The outside person shall:

1. determine that each return envelope contains the required signature and license number, and was timely received;

2. count all ballots properly prepared; and

3. certify the number of votes received by each candidate to the board president and the executive director, who shall notify the governor and the candidates of the results.

C. The three candidates receiving the highest number of votes in each district shall have their name submitted to the governor as nominees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§511. Tie

A. In the event the three candidates receiving the highest number of votes cannot be determined because of a tie, a run-off election will be held. The only candidates in the run-off election will be those candidates who received the same number of votes so that the outcome of the election cannot be fully determined.

B. If a run-off election is necessary, an official ballot and an official return envelope will be mailed to each licensed architect residing in Louisiana approximately two weeks after it has been determined that such an election is necessary.

C. The official ballot shall contain the information set forth in §505.A, except only the names of and the information for those candidates in the run-off election shall be included.

D. The rules for voting, for determining the person or persons elected as nominees, and for tabulating votes set forth elsewhere in this rule shall be applicable.

E. In the event the run-off election does not decide the three candidates receiving the highest number of votes, the procedure set forth herein shall be repeated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§513. Vacancy of Person Elected as Nominee

A. If a vacancy occurs with respect to a person elected as a nominee, that vacancy shall be filled in the following manner: The executive director shall give notice of the vacancy to all of the other candidates in that district and to anyone who has requested notice of any such vacancy in writing by certified mail within 90 days of the election; however, any failure to provide such notice shall not effect

any election conducted subsequently held to fill the vacancy. The executive director shall also publish notice of the vacancy in the official journal of the state for a period of not less than 10 calendar days. The published notice need not appear more than three times during the 10 day period. The published notice shall identify the district where the vacancy has occurred and state that any licensed architect domiciled in that district desiring to fill that vacancy shall advise the board in writing before the deadline determined by the president, and may contain other information. If more than one person seeks election as the nominee, the board will call another election to fill that vacancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§515. Election Contest

A. The executive director will notify the candidates of the results of the election by U.S. Mail. The 10 calendar days for contesting an election shall commence three work days (excluding Saturdays, Sundays, and legal holidays) after the results of the election are deposited in the mail by the executive director.

B. Any candidate desiring to contest an election shall, within the time period mentioned in the preceding paragraph, file a written petition addressed to the board stating the basis of the complaint. Upon receipt of such petition, the president shall call a special meeting of the board to hear the complaint, which meeting shall be held within 10 calendar days from the date the petition is received and at a time and place to be designated by the president. At the hearing the board shall consider any evidence offered in support of the complaint. The decision of the board shall be announced within 72 hours after the close of the hearing.

C. All ballots shall be preserved until the expiration of the time allowed for the filing and hearing of a contest. After such period has elapsed, if the election be not contested, the executive director shall destroy the ballots. If the election is contested, the executive director shall maintain the ballots until the contest is concluded, after which the executive director shall destroy the ballots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 7. Applications for Examination

§701. Making Application for Architectural Registration Examination

A. A person desiring to take the Architectural Registration Examination ("ARE") should contact the National Council of Architectural Registration Boards ("NCARB").

B. The applicant has full, complete, and sole responsibility for furnishing to NCARB all necessary information and paying to NCARB all required fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§703. Training Credits for Applicants Not Holding a Professional Degree

A. Experience used to meet the educational equivalency requirements set forth in R.S. 37:146(D)(2) can not be used

to satisfy the practical architectural work experience requirements set forth in R.S. 37:146(D)(3). Although training credits can be earned prior to satisfactory completion of the educational equivalency requirements set forth in R.S. 37:146(D)(2) at such times permitted by NCARB in its Circular of Information No. 1, experience used in earning such credits can not also be used to satisfy the training requirements of R.S. 37:146(D)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§705. Modifications to Examination Administration to Accommodate Physical Handicaps

A. Requests for modification to the examination administration to accommodate physical handicaps must be made in writing to the board. Such a request must be accompanied by a physician's report and/or a report by a diagnostic specialist, along with supporting data, confirming to the board's satisfaction the nature and extent of the handicap. After receipt of the request from the applicant, the board may require that the applicant supply further information and/or that the applicant appear personally before the board. It shall be the responsibility of the applicant to timely supply all further information as the board may require. The board, along with the National Council of Architectural Registration Boards (NCARB), shall determine what, if any, modifications will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 9. The Examination

§901. Examinations Required

A. The Architectural Registration Examinations ("ARE") prepared by the NCARB is adopted by this board as the examinations required to obtain registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§903. Review of Examination and Answers of the Candidate; Reversing Grades

A. A candidate will not be permitted to review his/her examination or answers thereto.

B. The board will not reverse the grade received by a candidate from NCARB.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 11. Registration Procedure

§1101. Registration Information

A. To obtain information regarding registration to practice architecture in Louisiana an individual, a corporation which satisfies the requirements of the Professional Architectural Corporations Law, an architectural-engineering corporation which satisfies the requirements of the Architectural-Engineering Corporation Law, and a limited liability company which satisfies the requirements of the Limited Liability Company Law shall write the board indicating whether the applicant seeks to be registered as an architect, a professional architectural corporation, an architectural-engineering corporation, or a

limited liability company. The applicant will then receive instructions on the procedure to follow. Upon passing all divisions of the examination, an in-state candidate shall be charged a fee of \$75 and an out of state candidate shall be charged a fee of \$150 for the issuance of his or her initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1103. Individuals Registered in Other States

A. The exclusive means for an individual registered in another state(s) seeking to be registered in Louisiana is the submission to the board of an NCARB (Blue Cover) certificate.

B. Upon finding the NCARB (Blue Cover) certificate in order and upon payment of the registration fee of \$300, the board will register said individual and issue a license to said individual to practice architecture in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1105. Certificates

A. Upon granting registration and issuance of a license to practice architecture, a copy of the licensing law and the rules of the board shall be forwarded to the registrant.

B. Only individuals, professional architectural corporations, architectural-engineering corporations, and limited liability companies who have met the statutory registration requirements through established board rules shall receive certificates of registration.

C. Each holder of a certificate shall maintain the certificate in his principal office or place of business in this state.

D. A replacement certificate will be issued to a registrant to replace one lost or destroyed, provided the current annual registration renewal is in effect, the registrant makes proper request and submits an acceptable explanation of the loss or destruction of the original certificate, and the registrant pays a fee to be set by the board.

E. A registrant retired from practice who has either practiced architecture for 30 years or more or who is 65 years of age or older may request emeritus status. Only a registrant who is fully and completely retired from the practice of architecture may request emeritus status. Any registrant who is presently receiving or who anticipates receiving in the future any salary, income, fees or other compensation (other than retirement income) from an architectural client, architectural firm, architect, design professional, or any other person for the practice of architecture is ineligible for emeritus status. The annual renewal fee for an approved emeritus registrant is \$5. Revocation and reinstatement rules apply to an emeritus registrant, just as they do to any other registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 13. Administration

§1301. Renewal Procedure

A. A license for individual architects shall expire and become invalid on December 31 of each year. Licenses for

professional architectural corporations, architectural-engineering corporations, and limited liability companies shall expire and become invalid on June 30 of each year. An individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company who desires to continue his or its license in force shall be required annually to renew same.

B. It is the responsibility of the individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company to obtain, complete, and timely return a renewal form and fee to the board office, which forms are available upon request from said office.

C. Prior to December 1 of each year the board shall mail to all individual architects currently licensed a renewal form. An individual architect who desires to continue his license in force shall complete said form and return same with the renewal fee prior to December 31. The license renewal fee for an individual architect domiciled in Louisiana shall be \$75, the license renewal fee for an individual domiciled outside Louisiana shall be \$150. Upon payment of the renewal fee the executive director shall issue a renewal license or registration.

D. Prior to June 1 of each year the board shall mail to all professional architectural corporations, architectural-engineering corporations, and limited liability companies currently licensed a renewal form. A professional architectural corporation, an architectural-engineering corporation, and a limited liability company which desires to continue its license in force shall complete said form and return same with the renewal fee prior to June 30. The fee shall be \$50. Upon payment of the renewal fee, the executive director shall issue a renewal license.

E. The failure to renew a license timely shall not deprive the architect of the right to renew thereafter. An individual architect domiciled in Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$75. An individual architect domiciled outside Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$150. The delinquent fee shall be in addition to the renewal fee set forth in the 1301.C.

F. The failure to renew its license in proper time shall not deprive a professional architectural corporation, an architectural-engineering corporation, or a limited liability company of the right to renew hereafter. A professional architectural corporation, an architectural-engineering corporation, or a limited liability company who transmits its renewal form and fee to the board subsequent to June 30 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$50. This delinquent fee shall be in addition to the renewal fee set forth in 1301.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1303. Architect's Seal or Stamp

A. The seal or stamp of the architect shall contain the name of the architect, the architect's license number, and the words "Registered Architect, State of Louisiana."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1305. Placing of Seal or Stamp

A. An architect shall affix his or her seal or stamp to all construction document drawings requiring the services of an architect which were prepared by the architect or under the architect's responsible supervision. Construction document drawings prepared by a consulting electrical, mechanical, structural, or other engineer shall be sealed or stamped only by the consulting engineer.

B. An architect shall clearly identify the specification sections prepared by that architect or under that architect's responsible supervision and distinguish such sections from those prepared by consulting engineers. An architect shall affix his or her seal or stamp either to:

1. each specification section, page, or sheet prepared by or under the responsible supervision of the architect, or
2. the appropriate portion of any Seals/Stamp Page in the specification document which identifies the specification sections prepared by the architect or under his or her responsible supervision and those sections prepared by consulting engineers. Consulting engineers shall affix their seal or stamp either to each specification section, page, or sheet prepared by that consultant, or to that portion of any Seals/Stamp Page which identifies the specification sections prepared by that consultant.

C. If a public or governmental agency requires further certification by the architect (such as that the title or index page of the specifications be certified by the architect), the architect's further certification shall include a description of exactly what drawings and what portions or sections of the specifications were prepared by or under the architect's responsible supervision, and what drawings and what portions or sections of the specifications were prepared by others. In addition, the architect shall include a certification from any consulting engineers as to what drawings and what portions or sections of the specifications were prepared by or under the responsible supervision of the consulting engineers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1307. Architect or Professional Engineer

A. It is recognized that in certain fields of practice there is a broad overlap between the work of architects and engineers. This is particularly true in the field of buildings and similar structures. It is recognized that an architect, who has complied with all of the current laws of Louisiana relating to the practice of architecture has a right to engage in activities properly classifiable as professional engineering insofar as it is necessarily incidental to his work as an architect. Likewise, it is recognized that the professional engineer, who has complied with all of the current laws of Louisiana, and is properly registered in that branch of engineering for which he may be qualified, has a right to engage in activities classifiable as architectural insofar as is necessarily incidental to his work as an engineer. Furthermore, the architect or the professional engineer, as the case may be, shall assume all responsibility for

compliance with all laws or ordinances relating to the designs of projects with which he may be engaged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1309. Calculating Gross Floor Area Under La. R.S. 37:155(4) Where Building Contains Mixed Occupancy Classifications

A. When a building contains more than one of the occupancy classifications set forth in R.S. 37:155(4)(f), the gross floor area shall be calculated by performing the following calculations.

1. Divide the gross floor area of each of the occupancy classifications by the corresponding threshold of each, as established in R.S. 37:155(4)(f). Round off the resultants to four decimal points.
2. Add the results of each of the above calculations.
3. If the total exceeds 1.0000, the building shall be determined to exceed the gross floor areas established in La. R.S. 37:155(4)(f).
 - a. For example, calculating the gross floor area of a building containing 3,126 square feet of storage occupancy and 2,000 square feet of business occupancy shall be performed as follows:

$$\begin{aligned}
 &3,126 \text{ actual storage sq. ft.} &= &0.5002 \\
 &\text{divided by } 6,250 \text{ threshold} && \\
 &2,000 \text{ actual business sq. ft.} &= &0.5000 \\
 &\text{divided by } 4,000 \text{ threshold} && \\
 &\text{Total} &= &1.0002
 \end{aligned}$$

b. In this example, the threshold square footage of this mixed occupancy building would be exceeded and, therefore, would not be exempt under R.S. 37:155(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1311. Interpretation of R.S. 37:155(4)(c)

A. As set forth in R.S. 37:155(4)(c), renovations or alterations of any size building which do not affect the structural integrity or life safety, exclusive of building finishes and furnishings, are exempted from the Licensing Law, R.S.37:141 et seq. Renovations or alterations which exceed \$125,000 are exempted from the Licensing Law only if the applicant documents to the satisfaction of the state fire marshal that the project does not affect structural integrity or life safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1313. Interpretation of R.S. 37:152(B)

A.1. Specifications, drawings, or other related documents will be deemed to have been prepared either by the architect or under the architect's responsible supervision only when:

- a. the client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the architect, or the architect's employee as long as the employee works in the architect's office;

b. the architect personally controls the preparation of the plans, specifications, drawings, reports or other documents and has input into their preparation prior to their completion;

c. if the plans, specifications, drawings, reports, or other such documents are prepared outside the architect's office, the architect shall maintain evidence of the architect's responsible control including correspondence, time records, check prints, telephone logs, site visit logs, research done for the project, calculations, changes, and written agreements with any persons preparing the documents outside of the architect's offices accepting professional responsibility for such work;

d. the architect reviews the final plans, specifications, drawings, reports or other documents; and

e. the architect has the authority to, and does, make necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents.

2. If an architect fails to maintain written documentation of the items set forth above, when such are applicable, then the architect shall be considered to be in violation of R.S. 37:152, and the architect shall be subject to the disciplinary penalties provided in R.S. 37:153. This written documentation should be maintained for the prescriptive period applicable to claims against the architect which may arise from his or her involvement in the project.

B.1. Nothing precludes the use of prototypical documents provided the architect:

a. has written permission to revise and adapt the prototypical documents from the person who either sealed the prototypical documents or is the legal owner of the prototypical documents;

b. reviewed the prototypical documents and made necessary revisions to bring the design documents into compliance with applicable codes, regulations, and job specific requirements;

c. independently performed and maintains on file necessary calculations;

d. after reviewing, analyzing, and making revisions and/or additions, issued the documents with his/her title block and seal (by applying his/her seal, the architect assumes professional responsibility as the architect of record); and

e. maintained design control over the use of site adapted documents just as if they were his/her original design.

2. The term *prototypical documents* shall mean model documents of buildings that are intended to be built in several locations with substantially few changes and/or additions except those required to adapt the documents to each particular site; that are generic in nature, that are not designed or premised upon the laws, rules or regulations of any particular state, parish, or municipal building code; that do not account for localized weather, topography, soil, subsistence, local building codes, or other such conditions or requirements; and that are not intended to be used as the actual documents to be employed in the construction of a building, but rather as a sample or a model to provide instruction or guidance. The term *legal owner* shall mean the person who provides the architect with a letter that he or she is the owner of the documents and has the written permission to allow the use thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1315. Continuing Education

A. Purpose and Scope. These rules provide for a continuing education program to insure that all architects remain informed of those technical and professional subjects necessary to safeguard life, health, and promote the public welfare. These rules shall apply to all architects practicing architecture in this state.

B. Exemptions. Exempt from participating in the continuing education program required by these rules are:

1. A newly registered architect during his or her initial year of registration.

2. An emeritus status architect as defined by board rule §1105.E.

3. A civilian who serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days during the annual report period.

4. An architect who demonstrates to the satisfaction of the board that meeting these requirements would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

C. Definitions

AIA The American Institute of Architects.

AIA/CES the continuing education system developed by AIA to record professional learning as a mandatory requirement for membership in the AIA.

ARE the Architect Registration Examination prepared by the National Council of Architectural Registration Boards.

Board the Louisiana State Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, Louisiana 70809, Telephone: 225-925-4802, Telecopier: 225-925-4804, website: <http://www.lastbdarchs.com>.

CEH a continuing education hour. One CEH is equivalent to 50 minutes of actual contact time.

HSW the health, safety and welfare of the public.

Individually Planned Educational Activities Educational activities in which the teaching methodology primarily consists of the architect himself/herself addressing HSW subjects which are not systemically presented by others, including authoring a published HSW paper, article or book and successfully completing college or university sponsored HSW courses.

NCARB the National Council of Architectural Registration Boards.

Non-Resident Architect Can architect registered by the board and residing outside Louisiana.

Resident Architect Can architect residing in this state.

Sponsor Can individual, organization, association, institution or other entity which offers an educational activity for the purpose of fulfilling the continuing education requirements of these rules.

Structured Educational Activities Educational activities in which the teaching methodology consists primarily of the systematic presentation of HSW subjects by qualified individuals or organizations, including HSW monographs, course of HSW study taught in person or by correspondence, organized HSW lectures, HSW presentations or workshops, and other means to which identifiable technical and

professional HSW subjects are presented in a planned manner.

D. Requirements

1. Beginning with license renewals effective January 1, 1999, all architects must show compliance with the educational requirements of these rules as a condition for renewing registration.

2. Resident architects shall complete a minimum of 12 continuing education hours (CEH) in HSW each calendar year, beginning with 1998. The 12 CEH must be obtained in either Structured Educational Activities or Individually Planned Educational Activities, as defined herein. Of the 12 required CEH, a minimum of eight CEH must be obtained in Structured Educational Activities. No more than four CEH may be obtained in Individually Planned Educational Activities. The requirement must be satisfied during the period which begins January 1 and ends December 31 of the calendar year immediately preceding the license renewal year.

3. Non-resident architects shall complete either:

a. the mandated requirements for continuing education of a jurisdiction in which that architect is registered to practice architecture, provided that a minimum of eight hours of CEH are obtained in HSW educational activities and also provided the other jurisdiction accepts satisfaction of Louisiana continuing education requirements as meeting its own, or

b. the requirements set forth herein for resident architects.

4. To satisfy the continuing education requirements for the year 1998 only, an architect may use hours obtained during calendar years 1997 and 1998.

5. If an architect is being re-registered after having been unregistered then, in addition to all other requirements, the architect must have acquired that number of total CEH that would have been required if registration had been regularly renewed.

E. Acceptable Educational Activities

1. Credit will be allowed only for continuing education activities in areas which:

a. directly safeguard the public's health, safety, and welfare, and

b. provide individual participant documentation from a person other than the participant for record keeping and reporting.

2. Only subject matters on the ARE current at the time of the activity are acceptable. An official list of approved topics to accomplish the purpose of these rules is published on the board's website. The board's current list is also available upon written request from the board.

3. Acceptable continuing educational activities in HSW include the following:

a. attending HSW professional or technical seminars, lectures, presentations, courses, or workshops offered by a professional or technical organization (AIA, National Fire Protection Association, Concrete Standards Institute, NCARB, etc), insurer, or manufacturer;

b. successfully completing HSW tutorials, short courses, correspondence courses, televised courses, or video-taped courses offered by a provider mentioned in the preceding paragraph;

c. successfully completing HSW monographs or other self-study courses such as those sponsored by NCARB or a similar organization which tests the architect's performance;

d. making professional or technical HSW presentations at meetings, conventions or conferences;

e. teaching or instructing HSW courses;

f. authoring a published HSW paper, article or book; and

g. successfully completing college or university sponsored HSW courses.

4. Continuing educational activities need not take place in Louisiana, but may be acquired at any location.

5. All continuing education activities shall:

a. have a clear purpose and objective;

b. be well organized and provide evidence of pre-planning;

c. be presented by persons who are well qualified by education or experience in the field being taught;

d. provide individual participant documentation from a person other than the participant for record keeping and reporting; and

e. shall not focus upon the sale of any specific product or service offered by a particular manufacturer or provider.

F. Number of Continuing Education Hours Earned

1. Continuing education credits shall be measured in CEH and shall be computed as follows.

a. Attending seminars, lectures, presentations, workshops, or courses shall constitute one CEH for each contact hour of attendance.

b. Successfully completing tutorials, short courses, correspondence courses, televised or video-taped courses, monographs and other self-study courses shall constitute the CEH recommended by the program sponsor.

c. Teaching or instructing a qualified seminar, lecture, presentation, or workshop shall constitute two CEH for each contact hour spent in the actual presentation. Teaching credit shall be valid for teaching a seminar or course in its initial presentation only. Teaching credit shall not apply to full-time faculty at a college, university or other educational institution.

d. Authoring a published paper, article or book shall be equivalent of 8 CEH.

e. Successfully completing one or more college or university semester or quarter hours shall satisfy the continuing education hours for the year in which the course was completed.

2. Any program in HSW contained in the record of an approved professional registry will be accepted by the board as fulfilling the continuing education requirements of these rules. The board approves the AIA as a professional registry, and contact hours listed in HSW in the AIA/CES Transcript of Continuing Education Activities will be accepted by the board for both resident and non-resident architects.

3. If the architect exceeds the continuing education requirement in any renewal period (January 1 through December 31), the architect may carry over a maximum of 12 qualifying CEH to the subsequent renewal period.

G Reporting, record keeping and auditing

1. Each architect shall complete the language on the renewal application pertaining to that architect's continuing education activities during the calendar year immediately preceding the license renewal period. Any untrue or false statement or the use thereof with respect to course attendance or any other aspect of continuing educational activity is fraud or misrepresentation and will subject the architect and/or program sponsor to license revocation or other disciplinary action.

2. To verify attendance each attendee shall obtain an attendance certificate from the program sponsor. Additional evidence may include but is not limited to attendance receipts, canceled checks, and sponsor's list of attendees (signed by a responsible person in charge of the activity). A log showing the activity claimed, sponsoring organization, location, duration, etc. should be supported by other evidence. Evidence of compliance shall be retained by the architect for two years after the end of the period for which renewal was requested.

3. A number of renewal applications will be randomly selected by the board for audit for verification of compliance with these requirements. Upon request by the board, evidence of compliance shall be submitted to substantiate compliance of the requirements of these rules. The board may request further information concerning the evidence submitted or the claimed educational activity. The board has final authority with respect to accepting or rejecting continuing education activities for credit.

4. The board may disallow claimed credit. If so, unless the board finds that the architect willfully disregarded these requirements, the architect shall have a period up to six months after notification of disallowance to substantiate the original claim or earn other CEH which fulfill the minimum requirements (and such CEH shall not again be used for the next renewal).

H. Pre-Approval of Programs

1. Upon written request, the board will review a continuing education program prior to its presentation provided all of the necessary information to do so is submitted in accordance with these rules. If the program satisfies the requirements of these rules, the board will pre-approve same.

2. A person seeking to obtain pre-approval of a continuing education program shall submit the following information:

- a. program sponsor(s): name(s), address(es), and phone number(s);
- b. program description: name, detailed description, length of instructional periods, and total hours for which credit is sought;
- c. approved Seminar Topic: division(s) and topic(s) from the current list of Approved Seminar Topics;
- d. program instructor(s)/leader(s): name(s) of instructor(s)/ leader(s) and credential(s);
- e. time and place: date and location of program; and
- f. certification of attendance: sponsor's method for providing evidence of attendance to attendees.

3. Such information shall be submitted at least 30 calendar days in advance of the program so that the board may analyze and respond.

4. The sponsor of a pre-approved program may announce or indicate as follows:

"This course has been approved by the Louisiana State Board of Architectural Examiners for a maximum of _____ CEH."

I. Non-Compliance

1. Failure to fulfill the continuing education requirements shall result in non-renewal of that architect's certificate of registration and loss of the right to practice architecture.

2. If the board finds that the architect willfully disregarded these requirements, the board may subject the architect to all of the disciplinary actions allowed by law, including license revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1317. Interpretation of R.S. 37:155(A)(3)

A. Registered architects of other states will be deemed to be associated with a registered architect of this state on a specific project within the meaning of R.S. 37:155(A)(3) only when:

1. a written agreement is signed by both the out-of-state and the in-state architects describing the association prior to executing the work;

2. the in-state architect reviews all documents prepared by the out-of-state architect and makes necessary revisions to bring the design documents into compliance with applicable codes, regulations, and requirements;

3. the in-state architect independently performs or contracts with an engineer or engineers licensed in Louisiana to perform necessary calculations, and maintains such calculations on file;

4. after reviewing, analyzing and making revisions and/or additions, the in-state architect issues the documents with his/her title block and seal (by applying his/her seal the architect assumes professional responsibility as the architect of record); and

5. the in-state architect maintains control over the use of the design documents just as if they were his/her original design.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1319. Interpretation of R.S. 37:141(B)(3); Design/Build

A. A partnership or corporation offering a combination of architectural services together with construction services may offer to render architectural services only if:

1. an architect registered in this state or otherwise permitted to offer architectural services participates substantially in all material aspects of the offering;

2. there is written disclosure at the time of the offering that such architect is engaged by and contractually responsible to such partnership or corporation;

3. such partnership or corporation agrees that such architect will have responsible control of the architectural work and that such architect's services will not be terminated prior to the completion of the project without the consent of the person engaging the partnership or corporation; and

4. the rendering of architectural services by such architect will conform to the provisions of the architectural registration law and the Rules adopted thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1321. Interpretation of R.S. 37:145; Architectural Engineers

A. A registered professional engineer who has a degree entitled Architectural Engineering from a public or private college or university accredited by the Accreditation Board for Engineering and Technology to offer such a degree may use the title "Architectural Engineer." A corporation, partnership, limited liability company, or group may include the title "Architectural Engineer" in its firm name, provided an owner, partner, or principal of that firm is a registered professional engineer who has such a degree from a public or private college or university so accredited.

B. This interpretation limits the use of the words "Architectural Engineer" to the descriptive title only. Nothing contained herein shall be construed to authorize or allow such an individual or firm to practice architecture in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 15. Titles, Firm Names, and Assumed Names

§1501. Misleading and Confusing Names Prohibited

A. The statutory authorization for architects to offer to the public the practice of architecture and the rendering of architectural services is not an authorization to hold out as an architect any person who is not registered by the board. An architect shall not practice architecture under an assumed, fictitious or corporate name that is misleading as to the identity, responsibility, or status of those practicing thereunder or is otherwise false, fraudulent, misleading, or confusing. For example, a firm whose name contains only the real name or names of individuals who are not licensed to practice architecture is considered misleading if it holds itself out as practicing architecture or renders architectural services, even if said firm employs a licensed architect or architects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1503. Architect's Responsibility

A. As a licensed professional, it is the responsibility of the architect to select and use a name which is neither misleading nor confusing. In case of doubt, an architect should first consult the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1505. Use of Term "Architect", "Architecture", or "Architectural"

A. Except as set forth in §1509, whenever the term "architect", "architecture", or "architectural" is used in a firm name, or whenever a firm includes its name in any listing of architects or of firms rendering architectural services, the name of a licensed architect followed by the title "architect" must be included either as a part of the firm title itself or a licensed architect must be identified in the listing, publication, announcement, letterhead or sign.

Allowed	Not Allowed
Smith & Jones, Architecture & Planning John Smith, Architect	Smith & Jones Architecture & Planning (unless Smith & Jones are both engaged in the active practice of architecture)
Smith & Jones, Architecture & Engineering John Smith, Architect	Smith & Jones Architecture & Engineering (unless Smith and Jones are both licensed architects engaged in the active practice of architecture)
Design Professionals Architecture & Planning John Smith, Architect	Design Professionals Architecture & Planning
Heritage Architectural Services John Smith, Architect	Heritage Architectural Services
John Smith, Architect, and Associates	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1507. Use of the Plural Term "Architects"

A. Except as set forth in §1509, if the firm title indicates that the firm contains two or more architects, the names of at least two licensed architects followed by the title "architect" must be included either as a part of the firm title itself or at least two licensed architects must be identified in the listing, publication, announcement, letterhead, or sign.

Allowed	Not Allowed
Communications Architects John Smith, Architect Jack Jones, Architect	Communications Architects
Smith & Jones, Architectural Services John Smith, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1509. Firm Name Which Includes Names of Licensed Architects Only

A. A firm name which includes only the name or names of licensed architects engaged in the active practice of

architecture is not required to include the name of a licensed architect followed by the title "architect" as a part of the firm title in any listing, publication, announcement, letterhead, or sign.

Allowed	Not Allowed
John Smith & Associates, Architects (if John Smith is a licensed architect engaged in the active practice of architecture)	John Smith & Associates, Architects (unless John Smith is a licensed architect engaged in the active practice of architecture)
Smith & Jones, Architects (if Smith & Jones are both licensed architects engaged in the active practice of architecture)	Smith & Jones, Architects (if Jones is deceased, retired, or not licensed by the board)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1511. Use of "AIA"

A. The use of "AIA", in and of itself, is not an acceptable substitution for the required title "architect" on every listing, publication, announcement, letterhead, business card, and sign used by an individual practicing architecture in connection with his practice.

Allowed	Not Allowed
John Smith, Architect John Smith, Architect, AIA	John Smith, AIA

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1513. Use of the Term "Associate"

A. An architect may only use the word "associate" in the firm title to describe a full time officer or employee of the firm. The plural form may be used only when justified by the number of associates who are full time firm employees. An architectural firm using the plural form, but which loses an associate or associates so that it is no longer able to do so, is not required to change its name for a period of two years from the departure of the associate. Identification of the associates in the firm title, listing, publication, letterhead, or announcement is not required.

Allowed	Not Allowed
John Smith & Associates, Architecture & Planning John Smith, Architect	John Smith & Associates Architects (if the firm employees only one associate as defined herein)
John Smith & Associates, Architect John Smith, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1515. Sole Proprietorship, Partnership, Group, Association, or Limited Liability Company

A. The firm name of any form of individual, partnership, corporate, limited liability company, group, or associate

practice must comply with all of the rules set forth in this Chapter.

Allowed	Not Allowed
John Smith, Architect	John Smith
John Smith, AIA, Architect	John Smith, AIA
John Smith, Architect, AIA	
John Smith & Associates John Smith, Architect	
Smith & Jones, Architect & Engineer John Smith, Architect	Smith & Jones, Architects & Engineers (if Smith & Jones are not licensed architects engaged in the active practice of architecture)
Smith & Jones, Architects & Engineer (if Smith and Jones are both licensed architects engaged in the active practice of architecture)	Smith & Jones, Architects (if either Smith or Jones are not licensed architects engaged in the active practice of architecture)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1517. Professional Architectural Corporations

The corporate name of a professional architectural corporation registered with this board must comply with R.S. 12:1088.

Allowed	Not Allowed
Smith & Jones, A Professional Architectural Corporation	Smith & Jones, Inc.
Smith & Jones, Architects, A Professional Architectural Corporation	Smith & Jones, A Professional Interior Architectural Corporation
Heritage Architects, A Professional Architectural Corporation	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1519. Architectural-Engineering Corporation

A. The corporate name of an architectural-engineering corporation registered with this board must comply with R.S. 12:1172.

Allowed	Not Allowed
Smith & Jones, An Architectural-Engineering Corporation	Smith & Jones
Smith & Jones, Inc.	
Heritage Architects, Ltd.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1521. Fictitious Name

A. For the purpose of these rules, a fictitious name is any name other than the real name or names of an individual. Any individual, partnership, corporation, limited liability company, group, or association may practice architecture under a fictitious name provided the name complies with all of the rules of this Chapter.

Allowed	Not Allowed
Heritage Architecture John Smith, Architect	Heritage Architecture
Architecture Design John Smith, Architect	Architectural Design
Architecture Design Consultants John Smith, Architect Jack Jones, Architect	Architectural Design Consultants John Smith, Architect
Heritage Architects, A Professional Corporation John Smith, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1523. Practicing in a Firm with Other Professionals

A. An architect who practices in a firm with one or more engineers, land surveyors, landscape architects, interior designers, or other professionals in an allied profession is permitted to use in the firm title a phrase describing the professions involved such as "Architect and Engineer", "Architects, Engineers, and Surveyors", etc. provided:

1. the title does not hold out to the public as an architect any person who is not registered by the board;
2. the name of any allied professional in the firm title is practicing in accordance with the applicable statutes and regulations that govern the practice of that allied profession; and
3. the title complies with all the rules of this Chapter.

Allowed	Not Allowed
Smith & Jones, Architect & Engineer	Smith & Jones, Architect & Engineer
John Smith, Architect Smith & Jones, Architects & Engineers	
John Smith, Architect Jack Jones, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1525. Deceased or Retired Member Predecessor Firms

A. An architect may include in the firm name the real name or names of one or more living, deceased, or retired members of the firm, or the name of a predecessor firm in a continuing line of succession. If a firm chooses to include in

any listing of architects a deceased or retired member, a deceased or retired member should be so identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1527. Unlicensed Persons

A. Unlicensed persons cannot use the term "architect", "architectural", "architecture" or anything confusingly similar to indicate that such person practices or offers to practice architecture, or is rendering architectural services. A person who has obtained a degree in architecture may not use the title "graduate architect."

Allowed	Not Allowed
Designer	Architectural Designer
Draftsman	Architectural Draftsman
Building Designer Products	Architectural Building Designer

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1529. Intern Architect

- A.1. A person who:
- a. has completed the education requirements set forth in NCARB Circular of Information No. 1;
 - b. is participating in or who has successfully completed the Intern Development Program ("IDP"); and
 - c. is employed by a firm which is lawfully engaged in the practice of architecture in this state may use the title "intern architect" but only in connection with that person's employment with such firm.

2. The title may not be used to advertise or offer to the public that such person is performing or offering to perform architectural services, and accordingly such person may not include himself in any listing of architects or in any listing of persons performing architectural services. Such person may use a business card identifying himself as an "intern architect", provided such business card also includes the name of the architectural firm employing such person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1531. Business Cards

A. The business card of an architect should comply with all of these rules including that the user thereof is identified as an "architect."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1533. Limited Liability Company

A. The name of a limited liability company registered with the board must comply with R.S.12:1306 and include the words "Limited Liability Company": the abbreviation "L.L.C."; or the abbreviation "L.C."

Allowed	Not Allowed
Smith & Jones, Architects, A Limited Liability Company	Smith & Jones, Architects (if the entity is a limited liability company)
Smith & Jones, Architects, L.L.C.	
Smith & Jones, Architects, L.C.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 17. Professional Architectural Corporations, Architectural-Engineering Corporations, and Limited Liability Companies

§1701. Professional Architectural Corporations

A. The practice of architecture by professional architectural corporations is only permissible when lawfully constituted under the laws pertaining to professional architectural corporations, R.S. 12:1086, et seq.

B. No person, firm, partnership, corporation, or group of persons shall solicit, offer, execute, or perform architectural services in this state as a professional architectural corporation without first receiving a certificate from the board authorizing the corporation to do so.

C. Any person seeking to be certified to practice architecture as a professional or professional corporation shall request in writing an application to do so from the office of the board. The request shall state the name of the proposed corporation. The applicant is required to complete said application fully and return same to the executive director. Upon receipt of such application and the fee, the board shall either approve said application and certify the applicant as a professional architectural corporation or disapprove said application advising the applicant of the reasons therefor.

D. Architectural services rendered on behalf of a professional architectural corporation must be performed by or under the direct supervision of a natural person duly licensed to practice architecture in this state.

E. The architects licensed in this state who perform such architectural services or directly supervise such services are responsible to this board for all acts and conduct of such corporation.

F. It will be the responsibility of all architects named in an application to be certified as a professional architectural corporation to advise the board of any organizational change that would relate to the authority granted under this rule. Failure to do so could result in disciplinary action leading to suspension, revocation, or rescission of the registrant's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1703. Architectural-Engineering Corporations

A. The practice of architecture by architectural-engineering corporations is only permissible when lawfully constituted under the laws pertaining to architectural-engineering corporations, R.S. 12:1171 et seq.

B. No person, firm, partnership, corporation, or group of persons shall solicit, offer, execute, or perform architectural

services in this state as an architectural-engineering corporation without first receiving a certificate from the board authorizing the corporation to do so.

C. Any person seeking to be certified to practice architecture as an architectural-engineering corporation shall request in writing an application to do so from the office of the board. The request shall state the name of the proposed corporation. The applicant is required to complete said application fully and return same to the executive director. Upon receipt of such application and the fee, the board shall either approve said application and certify the applicant as an architectural-engineering corporation or disapprove said application advising the applicant of the reasons therefor.

D. Architectural services rendered on behalf of an architectural-engineering corporation must be performed by or under the direct supervision of a natural person duly licensed to practice architecture in this state.

E. The architects licensed in this state who perform such architectural services or directly supervise such services are responsible to this board for all acts and conduct of such corporation.

F. It will be the responsibility of all architects named in an application to be certified as an architectural-engineering corporation to advise the board of any organizational change that would relate to the authority granted under this rule. Failure to do so could result in disciplinary action leading to suspension, revocation, or rescission of the registrants' license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1705. Limited Liability Companies

A. The practice of architecture by limited liability companies is only permissible when lawfully constituted under the laws pertaining to limited liability companies, R.S. 12:1301 et seq.

B. No person, firm, partnership, corporation, or group of persons shall solicit, offer, execute, or perform architectural services in this state as a limited liability company without first receiving a certificate from the board authorizing the limited liability company to do so.

C. A limited liability company soliciting, offering, contracting to perform, or performing the practice of architecture shall be subject to the discipline of the board and to its authority to adopt rules and regulations governing the practice of architecture.

D. Any person seeking to be certified to practice architecture as a limited liability company shall request in writing an application to do so from the office of the board. The request shall state the name of the proposed limited liability company. The applicant is required to complete said application fully and return same to the executive director. Upon receipt of such application and the fee, the board shall either approve said application and certify the limited liability company as authorized to practice architecture or disapprove said application advising the applicant of the reasons therefor.

E. Only a person who is presently licensed by the board pursuant to the provisions of R.S. 37:141 through R.S. 37:158, who is in compliance with said provisions, who is a full-time active employee of the limited liability company, and whose primary occupation is with that limited liability

company may be designated as a supervising professional architect.

F. By designating an architect as a supervising professional architect, the limited liability company authorizes that architect to appear for and act on behalf of the limited liability company in connection with the execution and performance of all contracts to provide architectural services.

G. In the event that such registered supervising professional architect ceases being a full-time active employee of the limited liability company or no longer employed by the limited liability company on a primary basis, the authority of the limited liability company to practice architecture is suspended until such time as the limited liability company designates another supervising professional architect pursuant to §1705.E above.

H. The designated supervising professional architect is responsible to this board for all acts and conduct of such limited liability company.

I. It will be the responsibility of all architects named in an application to be certified as a limited liability company to advise the board of any organizational change that would relate to the authority granted under this rule. Failure to do so could result in disciplinary action leading to suspension, revocation, or rescission of the registrants' license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 19. Rules of Conduct: Violations

§1901. Rules of Conduct

NOTE: Commentaries provided by the NCARB Professional Conduct Committee, except the numbering has been changed to conform to the format required by the *Louisiana Register*.

A. Competence

1. In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

COMMENTARY Although many of the existing state board rules of conduct fail to mention standards of competence, it is clear that the public expects that incompetence will be disciplined and, where appropriate, will result in revocation of the license. §1901.A.1 sets forth the common law standard which has existed in this country for a hundred years or more in judging the performance of architects. While some few courts have stated that an architect, like the manufacturer of goods, impliedly warrants that his design is fit for its intended use, this rule specifically rejects the minority standard in favor of the standard applied in the vast majority of jurisdictions that the architect need be careful but need not always be right. In an age of national television, national universities, a national registration exam, and the like, the reference to the skill and knowledge applied in the same locality may be less significant than it was in the past when there was a wide disparity across the face of the United States in the degree of skill and knowledge which an architect was expected to bring to his or her work. Nonetheless, the courts have still recognized this portion of the standard, and it is true that what may be expected of an architect in a complex urban setting may vary from what is expected in a more simple, rural situation.

2. In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect

shall not knowingly design a project in violation of such laws and regulations.

COMMENTARY It should be noted that the rule is limited to applicable state and municipal building laws and regulations. Every major project being built in the United States is subject to a multitude of laws in addition to the applicable building laws and regulations. As to these other laws, it may be negligent of the architect to have failed to take them into account, but the rule does not make the architect specifically responsible for such other laws. Even the building laws and regulations are of sufficient complexity that the architect may be required to seek the interpretation of other professionals. The rule permits the architect to rely on the advice of such other professionals.

3. An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

COMMENTARY While an architect is licensed to undertake any project which falls within the definition of the practice of architecture, as a professional, the architect must understand and be limited by the limitations of his or her own capacity and knowledge. Where an architect lacks experience, the rule supposes that he or she will retain consultants who can appropriately supplement his or her own capacity. If an architect undertakes to do a project where he or she lacks knowledge and where he or she does not seek such supplementing consultants, the architect has violated the rule.

4. No person shall be permitted to practice architecture if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.

COMMENTARY Here the state registration board is given the opportunity to revoke or suspend a license when the board has suitable evidence that the license holder's professional competence is impaired by physical or mental disabilities. Thus, the board need not wait until a building fails in order to revoke the license of an architect whose addiction to alcohol, for example, makes it impossible for that person to perform professional services with necessary care.

B. Conflict of Interest

1. An architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.

COMMENTARY This rule recognizes that in some circumstances an architect may receive compensation from more than one party involved in a project but that such bifurcated loyalty is unacceptable unless all parties have understood it and accepted it.

2. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his or her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

COMMENTARY Like §1901.B.1, this rule is directed at conflicts of interest. It requires disclosure by the architect of any interest which would affect the architect's performance.

3. An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

COMMENTARY This rule appears in most of the existing state standards. It is absolute and does not provide for waiver by agreement.

4. When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

COMMENTARY This rule applies only when the architect is acting as the interpreter of building contract documents and the judge of contract performance. The rule recognizes that that is not an inevitable role and that there may be circumstances (for example, where the architect has an interest in the owning entity) in which the architect may appropriately decline to act in those two roles. In general, however, the rule governs the customary construction industry relationship where the architect, though paid by the owner and owing the owner his or her loyalty, is nonetheless required, in fulfilling his or her role in the typical construction industry documents, to act with impartiality.

C. Full Disclosure

1. An architect, making public statements on architectural questions, shall disclose when he or she is being compensated for making such statement or when he or she has an economic interest in the issue.

COMMENTARY Architects frequently and appropriately make statements on questions affecting the environment in the architect's community. As citizens and as members of a profession acutely concerned with environmental change, they doubtless have an obligation to be heard on such questions. Many architects may, however, be representing the interests of potential developers when making statements on such issues. It is consistent with the probity which the public expects from members of the architectural profession that they not be allowed under the circumstances described in the rule to disguise the fact that they are not speaking on the particular issue as an independent professional but as a professional engaged to act on behalf of a client.

2. An architect shall accurately represent to a prospective or existing client or employer his or her qualifications, capabilities, experience, and the scope of his or her responsibility in connection with work for which he or she is claiming credit.

COMMENTARY Many important projects require a team of architects to do the work. Regrettably, there has been some conflict in recent years when individual members of that team have claimed greater credit for the project than was appropriate to their work done. It should be noted that a young architect who develops his or her experience working under a more senior architect has every right to claim credit for the work which he or she did. On the other hand, the public must be protected from believing that the younger architect's role was greater than was the fact.

3. The architect shall not falsify or permit misrepresentation of his or her associate's academic or professional qualifications. The architect shall not misrepresent or exaggerate his or her degree of responsibility in or for the subject matter or prior assignments. Brochures or other presentations incidental to the solicitation of employment shall not misrepresent pertinent facts concerning employer, employees, associates joint ventures, or his/her or their past accomplishments with the intent and purpose of enhancing his/her qualifications or his/her work.

4.a. If, in the course of his or her work on a project, an architect becomes aware of a decision taken by his or her employer or client, against the architect's advice, which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall,

i. report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations;

ii. refuse to consent to the decision; and

iii. in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his objection, terminate his services with reference to the project unless the architect is able to cause the matter to be resolved by other means.

b. In the case of a termination in accordance with §1901.C.4.a.iii, the architect shall have no liability to his or her client or employer on account of such termination.

COMMENTARY This rule holds the architect to the same standard of independence which has been applied to lawyers and accountants. In the circumstances described, the architect is compelled to report the matter to a public official even though to do so may substantially harm the architect's client. Note that the circumstances are a violation of building laws which adversely affect the safety to the public of the finished project. While a proposed technical violation of building laws (e.g., a violation which does not affect the public safety) will cause a responsible architect to take action to oppose its implementation, the Committee specifically does not make such a proposed violation trigger the provisions of this rule. The rule specifically intends to exclude safety problems during the course of construction which are traditionally the obligation of the contractor. There is no intent here to create a liability for the architect in this area. §1901.C.4.a.iii gives the architect the obligation to terminate his or her services if he or she has clearly lost professional control. The standard is that the architect reasonably believes that other such decisions will be taken notwithstanding his or her objection. The rule goes on to provide that the architect shall not be liable for a termination made pursuant to §1901.C.4.a.iii. Such an exemption from contract liability is necessary if the architect is to be free to refuse to participate on a project in which such decisions are being made.

5. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his or her application for registration or renewal.

COMMENTARY The registration board which grants registration or renews registration on the basis of a misrepresentation by the applicant must have the power to revoke that registration.

6. An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.

7. An architect possessing knowledge of a violation of these rules by another architect shall report such knowledge to the board.

COMMENTARY This rule has its analogue in the Code of Professional Responsibility for lawyers. Its thrust is consistent with the special responsibility which the public expects from architects.

D. Compliance with Laws

1. An architect shall not, in the conduct of his or her architectural practice, knowingly violate any state or federal criminal law.

COMMENTARY This rule is concerned with the violation of a state or federal criminal law while in the conduct of the registrant's professional practice. Thus, it does not cover criminal conduct entirely unrelated to the registrant's architectural practice. It is intended, however, that rule §1901.E.4 will cover reprehensible conduct on the part of the architect not embraced by rule §1901.D.1. At present, there are several ways in which member boards have dealt with this sort of rule. Some have disregarded the requirement that the conduct be related to professional practice and have provided

for discipline whenever the architect engages in a crime involved "moral turpitude."

The Committee declined the use of that phrase as its meaning is by no means clear or uniformly understood. Some member boards discipline for felony crimes and not for misdemeanor crimes. While the distinction between the two was once the distinction between serious crimes and technical crimes, that distinction has been blurred in recent years. Accordingly, the committee specifies crimes in the course of the architect's professional practice, and, under §1901.E.4, gives to the member board discretion to deal with other reprehensible conduct. Note that the rule is concerned only with violations of state or federal criminal law. The Committee specifically decided against the inclusion of violations of the laws of other nations. Not only is it extremely difficult for a member board to obtain suitable evidence of the interpretation of foreign laws, it is not unusual for such laws to be at odds with the laws, or, at least, the policy of the United States of America. For example, the failure to follow the dictates of the "anti-Israel boycott" laws found in most Arab jurisdictions is a crime under the laws of most of those jurisdictions; while the anti-Israel boycott is contrary to the policy of the government of the United States and following its dictates is illegal under the laws of the United States.

2. An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

COMMENTARY Section 1901.D.2 tracks a typical bribe statute. It is covered by the general language of §1901.D.1, but it was the Committee's view that §1901.D.2 should be explicitly set out in the rules of conduct. Note that all of the rules under this section look to the conduct of the architect and not to whether or not the architect has actually been convicted under a criminal law. An architect who bribes a public official is subject to discipline by the state registration board, whether or not the architect has been convicted under the state criminal procedure.

3. An architect shall comply with the registration laws and regulations governing his or her professional practice in any United States jurisdiction.

COMMENTARY Here, again, for the reasons set out under §1901.D.1, the Committee chose to limit this rule to United States jurisdictions.

E. Professional Conduct

1. Any office offering architectural services shall have an architect resident and regularly employed in that office.

2.a. An architect shall not sign or seal drawings, specifications, reports or other professional work which was not prepared by or under the responsible supervision of the architect; except that:

i. he or she may sign or seal those portions of the professional work that were prepared by or under the responsible supervision of persons who are registered under the architecture registration laws of this jurisdiction if the architect has reviewed in whole or in part such portions and has either coordinated their preparation or integrated them into his or her work, and

ii. he or she may sign or seal portions of the professional work that are not required by the architects' registration law to be prepared by or under the responsible supervision of an architect if the architect has reviewed and adopted in whole or in part such portions and has integrated them into his or her work.

b. "Responsible supervision" shall be that amount of supervision over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and

correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible supervision because the reviewer has neither supervision over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible supervision by persons not regularly employed in the office where the architect is resident shall maintain and make available to the board upon request for the prescriptive period applicable to claims against the architect which may arise from his or her involvement in the project adequate and complete records demonstrating the nature and extent of the architect's supervision over and detailed knowledge of such technical submissions throughout their preparation.

COMMENTARY This provision reflects current practice by which the architect's final construction documents may comprise the work of other architects as well as that of the architect who signs and seals professional submissions. The architect is permitted to apply his or her seal to work over which the architect has both control and detailed professional knowledge, and also to work prepared under the direct supervision of another architect whom he or she employs when the architect has both coordinated and reviewed the work.

3. An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

COMMENTARY This provision refers to "private bribes" (which are ordinarily not criminal in nature) and the unseemly conduct of using gifts to obtain work. Note that the rule realistically excludes reasonable entertainment and hospitality and other gifts of nominal value.

4. An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

COMMENTARY Violations of this rule may involve criminal conduct not covered by §1901.D.1 (crimes committed "in the conduct of his or her architectural practice"). The Committee believes that a state board must, in any disciplinary matter, be able to point to a specific rule which has been violated. An architect who is continuously involved in nighttime burglaries (no connection to his daytime professional practice) is not covered by §1901.D.1 (crimes committed "in the conduct of his or her architectural practice"). The Committee believes that serious misconduct, even though not related to professional practice, may well be grounds for discipline. To that end, the Committee recommends Rule §1901.E.4. Many persons who have reviewed and commented on the draft rules were troubled by the sententious character of rule §1901.E.4. The committee has, however, found that lawyers commenting on the rules had little trouble with the standard set in §1901.E.4; it applies to conduct which would be characterized as wicked, as opposed to minor breaches of the law. While each board must "flesh out" the rule, the Committee assumes that murder, rape, arson, burglary, extortion, grand larceny, and the like, would be conduct subject to the rule, while disorderly conduct, traffic violations, tax violations, and the like, would not be considered subject to this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§1903. Violations

A. Complaints alleging violation of law or rules and regulations, the enforcement of which is a responsibility of this board, should be addressed to the board office and

should be in writing and in the form of a sworn affidavit. The board, upon its own motion, may file a complaint against any architect.

B. Complaints shall be preliminarily investigated by the executive director, with the assistance of counsel and the president, who shall either dismiss the charges, so notifying the complainant, or refer the matter to the board for hearing. The board may also refer alleged violations to the appropriate district attorney and/or file suit pursuant to the provisions of R.S. 37:156.

C. The board may obtain the services of a reporter to make a record of the hearing. The respondent may contact the executive director to determine whether a reporter will be provided by the board.

D. Hearings before the board shall be in accordance with R.S. 37:141 et seq. and the Administrative Procedure Act, R.S. 49:951 et seq.

E. In all cases the board's executive director stands instructed to support and cooperate with counsel and the courts in any manner possible, and to keep the board advised of relevant matters as the case develops.

F. In the board office there shall be maintained a current file of all complaints alleging violations, reflecting all information and action pertinent thereto.

G. Upon its own motion, the board may reopen any such case on record and direct a reinvestigation of the respondent's actions subsequent to resolution of the original complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 21. Architects Selection Board

§2101. Districts

A. Only one architect may be elected from each of the districts set forth in R.S. 38:2311(A)(1)(a).

B. If the parishes comprising any district or if the number of districts are changed by the legislature, these rules shall be revised to be consistent with the latest expression of the legislature without the need of formal action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2103. Nominations

A. For terms commencing September 15 of each year, the board will accept nominations for election to the Architects Selection Board on the following basis: any resident architect holding a current Louisiana license desiring nomination must deliver a written nomination on a current form and/or reproduction obtained from board office to the board office in Baton Rouge, signed by not less than 10 resident architects other than the nominee holding a current Louisiana license, between May 1 and May 31 at 5:00 p.m. preceding the election. The nomination shall state the parish in which the nominee resides and the district for which election is sought. Nominations received on or before such deadline shall be considered timely delivered. Confirmation of receipt is the sole responsibility of the nominee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2105. Waiver of Election

A. If only one resident architect is nominated from any district, no election shall be held in that district, and that nominee shall be deemed elected without any further activity of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2107. Ballots

A. If an election is necessary, an official ballot and an official return envelope will be mailed to each resident architect in Louisiana in good standing approximately three weeks after the closing date for nominations. On the ballot shall be printed the names of the candidates for each district in alphabetical order, the date for the return of the ballots, and any other information the board believes helpful in the election process. Attachments to the ballot may include biographical information of the candidates and instructions.

B. If the ballot mailed by board is lost, misplaced or not received, an architect desiring to vote may request from the board a substitute or replacement ballot. This substitute or replacement ballot may be used in the election, provided the requirements of §2109.C are satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2109. Voting

A. Only resident architects in good standing in Louisiana shall have the right to vote. A resident architect may vote in one or more but less than all district elections, and no ballot shall be voided for that reason.

B. Ballots shall be returned in the official return envelopes provided by the board to the board office in Baton Rouge. The voting architect shall sign and provide his or her license number in the upper left-hand corner of the return envelope.

C.1. The ballot shall not be valid unless

a. the signature and license number appear on the return envelope; and

b. the return envelope is received by the board office on or before the deadline.

2. No write-in candidates will be allowed, and any ballot containing a vote for a write-in candidate will be voided. Any ballot containing more than one vote for candidates in one district will be entirely voided. Ballots returned in an envelope other than the official return envelope provided by the board shall not be voided for that reason, provided

a. the signature and license number of the voting architect appear on the return envelope; and

b. the return envelope is received by the board office on or before the deadline.

D. The deadline for returning the ballots will be fixed by the president and will be at least 14 calendar days after the ballots are mailed to all resident architects. Ballots received after the deadline shall not be counted.

E. Upon receipt, each return envelope shall be stamped by the board office showing the date received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2111. Plurality

A. The candidate elected in each district will be based on plurality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2113. Tabulation

A. On a date fixed by the president, within 14 calendar days of the deadline for receipt of ballots, tellers appointed by the president, including at least one board member, shall meet at the board office for the purpose of tabulating the ballots. Following a determination that each return envelope contains the required signature and license number, and was timely received, the tellers shall open and count all ballots properly prepared. The executive director will notify the candidates of the results.

B. Alternatively, when in the discretion of the president the manual tabulating of the ballots by tellers in accordance with the preceding paragraph would be burdensome, or for some other reason should be performed by an outside person, the president may refer the entire tabulating of the ballots, or any part thereof, to an accounting firm, data processing company, or other such qualified person in addition to one board member. The outside person may use such clerical or other assistance, including whatever assistance from the board staff, as he or she deems necessary. The outside person shall

1. determine that each return envelope contains the required signature and license number, and was timely received;

2. count all ballots properly prepared; and

3. certify the number of votes received by each candidate to the board president and the executive director, who shall notify the candidates of the results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2115. Tie

A. In the event no candidate receives a plurality, a run-off election between those candidates who received the highest number of votes will be held.

B. If a run-off election is necessary, an official ballot and an official return envelope will be mailed to each resident architect in Louisiana in good standing approximately two weeks after it has been determined that such an election is necessary.

C. The official ballot shall contain the information set forth in §2107, except only the names and information for those candidates in the run-off election shall be included.

D. The rules for voting, for determining the person elected, and for tabulating votes set forth in §2109, §2111, and §2113 shall be applicable.

E. In the event no candidate in the run-off election receives a plurality, the procedure set forth herein shall be repeated until one candidate receives a plurality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2117. Vacancies

A. Any vacancy occurring with respect to any person elected shall be filled in the following manner: The executive director shall give notice of the vacancy to any person who has previously requested such notice in writing, and the executive director shall also publish in the official journal of the state an advertisement which will appear for a period of not less than 10 calendar days. The advertisement in the official journal of the state need not appear more than three times during the 10 day period. The executive director may publish other such advertisements in his or her discretion. The advertisements shall identify the district in which a vacancy has occurred and state that any resident architect in that district holding a current Louisiana license desiring nomination must furnish a nomination signed by not less than 10 resident architects holding a current Louisiana license by certified mail to the board office, that a sample of the nomination may be obtained upon request from the board office, the deadline for filing the nomination, and any other information the board may consider necessary. The deadline for filing a nomination to fill a vacancy shall be at least 10 calendar days subsequent to the expiration of the last advertisement appearing in the official journal of the state. The board shall appoint one of the nominees to fill the vacancy, which appointee shall serve the unexpired term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2119. Election Contest

A. The executive director will notify the candidates of the results of the election by U.S. Mail. The 10 calendar days for contesting an election shall commence three work days (excluding Saturdays, Sundays, and legal holidays) after the results of the election are deposited in the mail by the executive director.

B. Any candidate desiring to contest an election shall, within the time period mentioned in the preceding paragraph, file a written petition addressed to the board stating the basis of the complaint. Upon receipt of such petition, the president shall call a special meeting of the board to hear the complaint, which meeting shall be held within 10 calendar days from the date the petition is received and at a time and place to be designated by the president. At the hearing the board shall consider any evidence offered in support of the complaint. The decision of the board shall be announced within 72 hours after the close of the hearing.

C. All ballots shall be preserved until the expiration of the time allowed for the filing and hearing of a contest. After such period has elapsed, if the election be not contested, the executive director shall destroy the ballots. If the election is contested, the executive director shall maintain the ballots until the contest is concluded, after which the executive director shall destroy the ballots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Chapter 23. Application of Rules

§2301. Severability

A. If any provision or item of the rules of the board or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of the rules

of the board which can be given effect without the invalid provisions, items or applications, and to this end the provisions of the rules of the board are hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

§2303. Adoption and Amendment of Rules

A. These rules may be amended pursuant to the Administrative Procedure Act, R.S. 49:951 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:

Interested persons may submit written comments on this proposed rule to Ms. Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, Louisiana 70809.

Mary "Teeny" Simmons
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Architects

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

The implementation of the new rule has no effect on costs in comparison to current practice. However, the effect of the proposed rule on costs in comparison to the existing rule is unknown. The proposed rule adds an executive director and board attorney as eligible persons for reimbursement of expenditures related to their official board duties which would likely increase costs to the board. On the other hand, this proposal will now allow "reasonable and necessary" expenses to eligible persons rather than "actual" expenses. This clarification may result in a reduction in costs to the board. Therefore, the net effect of these changes is unknown. In addition, the board will no longer oversee the Architectural Registration Examination (A.R.E.) process which will result in a decrease in workload during the period in which this exam was administered.

Although the changes to the existing rules will result in varying increases and decreases in costs, no net significant change is anticipated.

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

The proposed rule clarifies the eligibility of "emeritus" architects and potentially could have a minor positive impact on revenues to the board. The renewal fee will increase from \$5 to \$75 annually for architects no longer eligible under this proposed rule to be considered an "emeritus" architect.

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

There will be no cost 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 or employment associated with this proposed rule.

Paul H. Spaht
Attorney
0210#045

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services

Targeted Case Management Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to amend the following rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is amended in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopted a Rule governing the provision of case management services to targeted populations and certain home and community based services waiver groups (*Louisiana Register*, Volume 25, Number 7). The primary objective of these case management services is attainment of the personal outcomes identified in the recipient's comprehensive plan of care.

The current 1999 Rule provides general provisions governing the services for all the covered population groups, including requirements for providers, personnel, and case management agencies. The bureau proposes to amend the July 20, 1999 Rule by adopting requirements related to a nurse consultant on-site, and by amending the criteria related to the agency quality improvement plan and self-evaluation.

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.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the July 20, 1999 Rule to adopt the following requirements governing the provision of case management services to targeted population groups and certain home and community based services waiver groups.

II. Standards of Participation

A. - B.5. ...

6. All enrolled providers of optional targeted and waiver case management must submit to the Bureau of Community Supports and Services an agency quality improvement plan (QAP) for approval within 90 days of enrollment. Six months following approval of the QAP and annually thereafter, the agency must submit an agency self-evaluation using the requirements contained in the *Medicaid Case Management Services Provider Manual*.

B.7 - C.2. ...

III. Standards for Payment

A. - A.2. ...

3. Each enrolled case management agency shall employ or contract with a licensed registered nurse to serve as a consultant.

a. Each case management agency must have a written job description and consultation plan that describes how the nurse consultant will participate in the comprehensive plan of care (CPOC) development for

medically complex individuals and others as indicated by the high risk indicators.

b. The nurse consultant shall provide consultation to the case management agency staff on health-related issues as well as education and training for case managers and case manager supervisors.

c. The nurse consultant shall be available on-site at the case management agency location at least four hours per week.

B. - B.2.d. ...

3. Education and Experience of Nurse Consultant. The nurse consultant must meet the following educational qualifications:

a. be a licensed registered nurse with a bachelor's degree in nursing. No substitutions for the bachelor's degree in nursing is allowed; and

b. have one year of paid experience as a registered nurse in a public health or human service field providing direct recipient services or case management.

B.4. - C.3. ...

Interested persons may submit written comments to Barbara Dodge at the Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, November 25, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Targeted Case Management Services**

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

There are no estimated programmatic implementation costs to the state as a result of this proposed Rule. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-03 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 have no effect on revenue collections.

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

This Rule proposes to amend the staffing requirements for Medicaid enrolled case management agencies to include a licensed registered nurse, and also proposes to amend the criteria related to the agency quality improvement plan and self-evaluation. It is anticipated that the implementation of this proposed Rule will cost case management providers (approximately 38) about \$125 per week to employ or contract with a licensed registered nurse to serve as a consultant for at least 4 hours per week.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule may increase competition to hire qualified licensed registered nurses and may increase employment opportunities of licensed registered nurses.

Ben A. Bearden
Director
0210#056

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Abortion Facility Licensure
(LAC 48:I.Chapter 44)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule as authorized by R.S. 40:2175.1 et seq. This proposed Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule in order to implement the provisions of the Louisiana Outpatient Abortion Facility Licensing Law, as established in Act 391 of the 2001 Regular Session of the Louisiana Legislature, which provides the Department of Health and Hospitals with the authority to promulgate rules governing the licensing and regulation of outpatient abortion facilities.

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

Title 48

PUBLIC HEALTHC GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 44. Abortion Facilities

§4401. Definitions

Abortion Any surgical procedure performed after pregnancy has been medically verified with the intent to cause the termination of the pregnancy other than for the purpose of producing a live birth, removing an ectopic pregnancy, or to remove a dead fetus caused by a spontaneous abortion.

Department Department of Health and Hospitals, (DHH).

Existing Outpatient Abortion Facility Any outpatient abortion facility, as defined in this §4401, in operation at the time that the licensing standards governing outpatient abortion facilities are promulgated and published.

First Trimester the time period from six to fourteen weeks after the first day of the last menstrual period.

General Anesthesia Any drug, element, or other material which, when administered, results in a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including a loss of ability to

independently maintain an airway and respond purposefully to physical stimuli or verbal command.

Gestational Age—the duration of a pregnancy as estimated from the first day of a woman's last menstrual period (LMP) or fertilization date plus two weeks.

Licensee—the person, partnership, corporation, association, organization or professional entity on whom rests the ultimate responsibility and authority for the conduct of the outpatient abortion facility.

Licensing Agency—the Louisiana Department of Health and Hospitals.

Local Anesthesia—those anesthetizing agents administered by needle and affecting a very small localized area.

Medical Director—a physician licensed to practice medicine in Louisiana who is responsible for the direction of the medical services, nursing services, and health-related services provided to patients at an outpatient abortion facility.

Outpatient Abortion Facility—any outpatient facility, other than a hospital as defined in R.S. 40:2102 or an ambulatory surgical center as defined in R.S. 40:2133, in which any second trimester or five or more first trimester abortions per month are performed.

Patient—the woman receiving services from an outpatient abortion facility.

Products of Conception—placenta, amniotic sac or membrane, embryo, or fetal elements that result from a human pregnancy.

Second Trimester—the time period from 14 to 23 weeks after the first day of the last menstrual period.

Secretary—the secretary of the Louisiana Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4403. Licensing Requirements

A. An outpatient abortion facility may not be established or operated in this state without an appropriate license issued by the licensing agency.

B. Initial License Application

1. Initial applicants and existing outpatient abortion facilities shall submit a set of architectural plans and specifications to the Office of State Fire Marshal and Division of Engineering and Architectural Services of the department for review and approval.

2. When an architectural requirement on an existing outpatient abortion facility would impose a hardship, financial or otherwise, but would not adversely affect the health and safety of any patient, the existing outpatient abortion facility may submit a request for exception (waiver) to the department, with supporting documentation. The issuance of a waiver by the department does not apply to the Office of State Fire Marshal requirements for approval, which must be addressed exclusively with the office of State Fire Marshal.

3. An application for license shall be completed and returned to the Health Standards Section by the applicant on forms supplied by the department.

a. Existing outpatient abortion facilities must secure and return a completed licensing application packet to the department within six months from promulgation and

publication of the outpatient abortion facility licensing standards.

b. Existing outpatient abortion facilities shall be allowed to continue to operate without a license until such time as their initial application is acted upon by the department and until any and all appeals processes associated with that initial license have been completed, or the time within which any appeal process may be undertaken and completed has expired, whichever is later.

4. The application must be accompanied with a non-refundable licensing fee set in accordance with R.S. 40:2006.

5. The department will respond to the applicant within 45 days of submitting the completed application.

6. Announced on-site inspections will be performed and the facility must be in substantial compliance with the requirements of the following offices prior to the issuance of an initial license:

- a. Office of State Fire Marshal;
- b. Office of Public Health;
- c. DHH Health Standards Section.

C. Renewal Application

1. Application for license renewal shall be completed and returned to the Health Standards Section prior to the expiration date of the current license on forms supplied by the department. Application must be accompanied by annual renewal fee set in accordance with R.S. 40:2006.

2. Inspection and approval by the State Fire Marshal and Office of Public Health are required annually.

3. The licensing agency may perform an unannounced on-site inspection upon annual renewal. If the outpatient abortion facility continues to meet the requirements established in R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof, a license shall be issued which is valid for one year.

D. Other on-site inspections may be performed to investigate complaints in accordance with R.S. 40:2009.13 - 2009.20 and perform follow-up surveys as deemed necessary to ensure compliance with these licensing standards.

E. Issuance of License

1. Following receipt of the application and the licensing fee, the department shall issue a license if, after an on-site inspection, it finds that the outpatient abortion facility is in full compliance with the requirements established in accordance with R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof.

2. A provisional license may be issued in cases where additional time is needed for the outpatient abortion facility to comply fully with the requirements established in accordance with R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof. The licensing agency may issue a provisional license to an outpatient abortion facility for a period not to exceed six months only if the failure to comply is not detrimental to the health or safety of the women seeking treatment in the outpatient abortion facility. The deficiencies which preclude the outpatient abortion facility from being in full compliance must be cited at the time the provisional license is issued.

3. A license issued to an outpatient abortion facility is valid for only one location.

4. A license issued to an outpatient abortion facility shall be valid for one year from the date of issuance, unless revoked prior to that date.

5. A license issued to an outpatient abortion facility is not transferable or assignable.

6. A license issued to an outpatient abortion facility shall be posted in a conspicuous place on the licensed premises.

F. Denial, Suspension or Revocation of License

The procedure for denial, suspension and revocation of a license and appeals resulting from these actions will be the same as provided in the licensing regulations for hospitals, and as contained in Louisiana R.S. 40:2110.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4405. Governing Authority

A. The abortion facility must have a governing body which meets at least annually. The governing body is the ultimate authority of the facility, and as such, it shall approve and adopt all bylaws, rules, policies, and procedures formulated in accordance with these licensing standards. All bylaws, rules, policies, and procedures formulated in accordance with these licensing standards shall be in writing, revised as necessary, and reviewed annually. If, due to type of ownership or other reasons, it is not possible or practical to establish a governing body, as such, then documents shall reveal the person(s) who are legally responsible for the conduct of the facility and are also responsible for carrying out the functions and obligations contained herein pertaining to the governing body.

B. The responsibilities of the governing authority shall include, but not be limited to:

1. organization and administration of the facility;
2. acting upon recommendations from the medical staff relative to medical staff appointments;
3. designation of an administrator who has the responsibility to carry out the day-to-day operations of the facility;
4. designation of a medical director who has responsibility for the direction of medical services, nursing services, and health-related services provided to patients;
5. maintenance of the physical plant;
6. ensuring that the facility is equipped and staffed to meet the needs of the patients in the facility; and
7. establishing a system for periodic evaluation of its operation (quality assurance).

C. The governing body shall establish formal lines of communication with the medical staff through a liaison committee or other acceptable methods. This committee will address problems and programs of mutual concern regarding topics including, but not limited to, patient care, cost containment and improved practice.

D. Minutes of meetings of the governing body shall be maintained to adequately reflect the discharging of its duties and responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4407. Administration

A. The administrator is the person who has been designated to carry out the day-to-day operations of the facility which include, but are not limited to the following functions:

1. employing qualified staff to provide the medical and clinical services to meet the needs of the patients being served;
2. assigning duties and functions to each employee commensurate with his/her licensure, certification, and experience and competence;
3. retaining a readily accessible written protocol for managing medical emergencies and the transfer of patients requiring further emergency care to a hospital. The facility shall ensure that the physicians who practice at the facility have admitting privileges or have a written agreement with a physician(s) who has admitting privileges at a local hospital to facilitate emergency care;
4. developing disaster plans for both internal and external occurrences. Annual drills shall be held in accordance with the plan. Documentation of these drills shall be recorded;
5. ensuring that a CPR-certified staff member who is currently trained in the use of emergency equipment is on the premises at all times when abortion services are being performed in the facility.

B. Personnel Files

1. Personnel folders shall be maintained on each employee. Contents shall include:
 - a. application;
 - b. current license(when required);
 - c. health screening reports;
 - d. documentation of areas covered in orientation;
- and
- e. other pertinent information as deemed necessary by the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4409. Personnel

A. Medical Staff

1. The medical staff of the facility shall consist of at least one physician who is licensed to practice medicine in Louisiana and is responsible to the governing body of the facility for the quality of all medical care provided to patients in the facility and for the ethical and professional practices of its members.

2. The medical staff shall formulate and adopt bylaws, rules, and policies for the proper conduct of its activities and recommend to the governing body physicians who are considered eligible for membership on the medical staff. Such bylaws, rules, and policies must be in writing and must be approved by the governing body.

3. All applications for membership to the medical staff shall be reviewed by the medical staff and recommendations for appropriate action shall be made to the governing body. The governing body's bylaws shall establish time frames for response to the recommendations of the medical staff.

4. An abortion shall be performed only by a physician who is licensed to practice in Louisiana.

5. A physician must be either present in the facility or immediately available by telecommunications to the staff when there is a patient in the facility.

6. A physician must remain in the facility until all patients are assessed to be stable.

B. Nursing Personnel

1. The nursing services shall be provided under the direction of a qualified registered nurse or medical director.

2. There shall be a plan of administrative authority with delineation of responsibilities and duties for each category of nursing personnel.

3. The number of nursing personnel on duty shall be sufficient to meet the needs of the patient(s) in the facility, as determined by the governing body, medical director, or registered nurse.

4. All nurses employed by the facility to practice professional nursing shall have a current and valid Louisiana nursing license as a registered nurse (RN) or licensed practical nurse (LPN), as appropriate.

5. Nursing care policies and procedures shall be in writing and be consistent with accepted nursing standards. Policies shall be developed for all nursing service procedures provided at the facility. The procedures shall be periodically reviewed and revised as necessary.

6. A formalized program of in-service training shall be developed for all categories of nursing personnel. Training related to required job skills shall be provided to nursing personnel.

C. General Staffing

1. When a patient is in the facility for an abortion, there shall be at least two staff members present, one of which must be either a licensed physician, RN, or LPN.

2. All employees shall be provided orientation and training with the facility's policies, philosophy, job responsibilities of all staff and emergency procedures.

D. Health Screenings

1. Facility must have policies governing health screening on personnel in accordance with federal, state and local health laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4411. Pre-Operative Procedures

A. Verification of Pregnancy. The presence of an intrauterine pregnancy shall be verified by one of the following:

1. urine or serum pregnancy test performed on-site;
2. detection of fetal heart tones; or
3. ultrasonography.

B. Duration of Pregnancy. Gestational age shall be estimated by the following methods pre-operatively:

1. date of last menstrual period, if known; and
2. pelvic examination; or
3. ultrasonography.

C. The following laboratory tests shall be performed and documented within 30 days prior to the performance of abortion:

1. hematocrit or hemoglobin determination; and
2. Rh Factor status.

D. Information and Informed Consent. Prior to an abortion:

1. a written informed consent shall be obtained in accordance with R.S. 40:1299.35.6(B). In order to ensure informed consent, a physician or other healthcare worker shall inform the patient of the material medical risks, benefits, and alternatives to the abortion procedure;

2. the clinical record shall reflect informed consent for general anesthesia, if it is to be administered, as well as an indication of the patient's history of negative or positive response (for example, allergic reactions) to medications or any anesthesia to be given;

3. the patient shall be made aware of the importance of her post-operative care and follow-up to ensure that the procedure was properly completed and no long-term sequelae have ensued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4413. Post-Operative Care and Procedures

A. The patient's recovery shall be supervised by a licensed physician or nurse trained in post-operative care. A patient in the post-operative or recovery room shall not be left unattended.

B. The patient shall be given written post-operative instructions for follow-up care. A contact for post-operative care from the facility shall be available to the patient on a 24-hour basis.

C. A licensed physician or nurse shall assess the patient to be awake, alert and medically stable before she is discharged in accordance with policies established by the medical director.

D. Upon completion of an abortion procedure, the physician shall immediately perform a gross examination of the uterine contents and shall document the findings in the patient's chart. If no products of conception are visible, a high-risk protocol for continuing pregnancy or ectopic pregnancy shall be followed.

E. Products of conception shall be disposed in compliance with Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and other state and local standards covering the treatment of medical waste.

F. Rh immunoglobulin administration shall be offered to Rh-negative women and documented. If Rh immunoglobulin is not administered in the facility, one of the following is required:

1. informed waiver signed by a patient who refuses RH immunoglobulin; or
2. documentation of other arrangements for administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4415. Patient Records and Reports

A. Retention of Patient Records

1. An abortion facility shall establish and maintain a medical record on each patient. The facility shall maintain the record to assure that the care and services provided to each patient is completely and accurately documented, and that records are readily available and systematically

organized to facilitate the compilation and retrieval of information.

2. Patient records shall be under the custody of the facility for a period of 10 years from the date of discharge. If the patient is a child, then the record shall be maintained for at least seven years after the child's eighteenth birthday. Patient records shall be maintained on the premises for at least five years and shall not be removed except under court orders or subpoenas. Any patient record maintained off-site after the fifth year shall be provided to the department for review no later than 24 hours from the time the department requests the medical record.

B. Content of Medical Record

1. The following minimum data shall be kept on all patients:
 - a. identification data;
 - b. date of procedure;
 - c. medical and social history;
 - d. physical examination;
 - e. chief complaint or diagnosis;
 - f. clinical laboratory reports (when appropriate);
 - g. pathology report (when appropriate);
 - h. physician's orders;
 - i. radiological report (when appropriate);
 - j. consultation reports (when appropriate);
 - k. medical and surgical treatment;
 - l. progress notes, discharge notes, and summary;
 - m. nurses' records of care given including medication administration records;
 - n. authorizations, consents or releases;
 - o. operative report;
 - p. anesthesia report including post-anesthesia report; and
 - q. special procedures reports.

2. Signatures. Clinical entries shall be signed by the physician as appropriate, i.e., attending physician, consulting physician, anesthesiologist, pathologist, etc. Nursing notes and observations shall be signed by the nurse.

3. Nurses' Notes. All pertinent observations, treatments and medications given shall be entered in the nurses' notes. All other notes relative to specific instructions from the physician shall be recorded.

4. Completion of the medical record shall be the responsibility of the attending physician.

C. Nothing in this '4415 is intended to preclude the use of automated or centralized computer systems or any other techniques for the storing of medical records, provided the regulations stated herein are met.

D. Other Reports

1. Abortion facility shall maintain a daily patient roster of all patients receiving abortion services. This daily patient roster shall be retained for a period of 10 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4417. Physical Environment

A. The facility shall have a safe and sanitary environment that is properly constructed, equipped and maintained to protect the health and safety of patients and staff at all times.

1. Abortions shall be performed in a segregated procedure room, removed from general traffic lines with a minimum of 120 square feet, exclusive of vestibule, toilets or closets.

2. There shall be a hand washing fixture within each procedure room.

3. The facility shall have a separate recovery room or area with a minimum clear area of 2 feet, 6 inches around the three sides of each stretcher or lounge chair for work and circulation.

4. The following equipment and supplies shall be maintained to provide emergency medical care for problems that may arise and be immediately available to the procedure and recovery room(s):

- a. surgical or gynecologic table;
- b. surgical instruments for the performance of abortion;
- c. emergency drugs;
- d. oxygen;
- e. intravenous fluids; and
- f. sterile dressing supplies.

5. The following equipment shall also be available:

- a. cardiac monitor;
- b. equipment for cardiopulmonary resuscitation;
- c. defibrillator;
- d. aspirator;
- e. endotracheal equipment
- f. laryngoscopes; and
- g. tracheotomy set.

6. All openings to the outside shall be maintained to protect against the entrance of insects and animals.

7. A nurse's station with a countertop, space for supplies, provisions for charting and a communication system shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4419. Infection Control

A. The facility shall have policies and procedures that address:

1. decontamination;
2. disinfection;
3. sterilization; and
4. storage of sterile supplies.

B. The facility shall make adequate provisions for furnishing properly sterilized supplies, equipment, utensils and solutions.

1. It is expected that some disposable goods shall be utilized; but when sterilizers and autoclaves are used, they shall be of the proper type and necessary capacity to adequately meet the needs of the facility.

2. Procedures for the proper use of equipment and standard procedures for the processing of various materials and supplies shall be in writing and readily available to personnel responsible for sterilizing procedures.

3. Acceptable techniques for handling sterilized and contaminated supplies and equipment shall be established to avoid contamination.

4. Medically necessary surgical instruments used to enter the uterine cavity shall be sterilized for each abortion procedure.

C. There shall be a separate sink for cleaning instruments and disposal of liquid waste.

D. Each facility shall develop, implement, and enforce written policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

1. If the facility provides an in-house laundry, the areas shall be designed in accordance with acceptable hospital laundry design in that a soiled laundry area will be provided and separated from the clean laundry area. Dirty and/or contaminated laundry shall not be stored or transported through the clean laundry area.

2. For an in-house laundry, special cleaning and decontaminating processes shall be used for contaminated linens.

E. The facility shall provide housekeeping services which shall assure a safe and clean environment.

1. Housekeeping procedures shall be in writing and followed.

2. Housekeeping supplies shall be provided to adequately maintain the facility.

F. All garbage and waste materials shall be collected, stored and disposed of in a manner designed to prevent the transmission of contagious diseases, and to control flies, insects, and animals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4421. Pharmaceutical Services

A. The facility shall provide pharmacy services and these services shall be commensurate with the needs of the patients and in conformity with state and federal laws.

B. There shall be policies and procedures for the storage, distribution, and handling and administration of drugs and biologicals in the facility.

C. The facility shall provide facilities for proper storage, safeguarding and distribution of drugs.

1. Drug cabinets must be constructed and organized to assure proper handling and safeguard against access by unauthorized personnel.

2. Storage areas shall have proper controls for ventilation, lighting and temperature.

3. Locked areas shall be designed to conform with state and federal laws.

D. In accordance with all applicable laws, records shall be kept on:

1. all ordering, purchasing, dispensing; and distribution of drugs; and

2. the disposal of unused drugs.

E. Records for prescription drugs dispensed to each patient shall contain the:

1. full name of the patient;
2. name of the prescribing physician;
3. name and strength of the drug;
4. quantity dispensed; and
5. date of issue.

F. Provision shall be made for emergency pharmaceutical service.

G. All outpatient abortion facilities shall have a "site-specific" Louisiana Controlled Dangerous Substance License and United States Drug Enforcement Administration Controlled Substance Registration for the facility in accordance with the Louisiana Uniform Controlled Dangerous Substance Act and Title 21 of the *United States Code*.

H. Drugs and biologicals shall be administered in compliance with an order from a physician who is licensed to practice medicine in Louisiana. Such orders shall be in writing and signed by the prescribing physician.

I. There shall be a supply of drugs for stabilizing and/or treating medical and surgical complications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§4423. Anesthesia Services

A. The facility shall have policies and procedures pertaining to the administration of general and local anesthesia that are approved by the medical director.

B. Local anesthesia and nitrous oxide shall be administered by the treating physician or by qualified personnel (RNs or LPNs) under the orders and supervision of the treating physician, as allowed by law. The term "local anesthesia" means those anesthetizing agents administered by needle and affecting a very small localized area.

C. General anesthesia, if used, shall be given by an anesthesiologist, certified registered nurse-anesthetist (CRNA), or a physician trained in the administration of general anesthesia.

D. The physician who will perform the abortion shall be present in the facility before anesthesia is administered.

E. A physician shall be present in the facility during the post anesthesia recovery period until the patient is fully reacted and stable.

F. When there is a general anesthesia patient present in the facility, personnel trained in the use of all emergency equipment required shall be present on the premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Monday, November 25, 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 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: Abortion Facility Licensure

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

It is anticipated that there will be no estimated costs to the state as a result of implementation of this proposed rule. It is anticipated that \$1,566 (\$783 SGF and \$783 FED) will be expended in SFY 2002-03 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that implementation of this proposed rule will increase self generated funds by approximately \$3,770 for SFY 2002-03, \$7,800 for SFY 2003-04 and SFY 2004-05 as a result of the collection of annual fees from the licensing of outpatient abortion facilities.

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

It is anticipated that implementation of this proposed rule will increase self generated funds by approximately \$3,770 for SFY 2002-03, \$7,800 for SFY 2003-04 for SFY 2004-05 as a result of the collection of annual fees from the licensing of approximately 13 outpatient abortion facilities at a cost of approximately \$600 for each facility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A Bearden
Director
0210#057

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Disproportionate Share Hospital Payment Methodologies
Final Payment and Small Rural Hospitals**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in May of 1999 governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, Volume 25, Number 5). The May 20, 1999 Rule was subsequently amended to revise the disproportionate share qualification criteria for small rural hospitals in March 2000 (*Louisiana Register*, Volume 26, Number 3) and again in August 2002 (*Louisiana Register*, Volume 28, Number 8).

Act 35 of the 2002 First Extraordinary Session of the Louisiana Legislature provides changes to the criteria used to define rural hospitals. In compliance with Act 35, the bureau promulgated an Emergency Rule to revise the disproportionate share qualification criteria for small rural hospitals (*Louisiana Register*, Volume 28, Number 8). In

response to provider inquiries, the bureau promulgated a subsequent emergency rule in order to clarify the policy governing final payments and adjustments (*Louisiana Register*, Number 28, Volume 9). The bureau hereby proposes to adopt a Rule to continue the provisions contained in the August 5, 2002 and September 7, 2002 Emergency Rules.

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

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the August 20, 2002 Rule governing the disproportionate share payment methodologies as follows.

I. General Provisions

A. - D. ...

E. Qualification is based on the hospital's latest filed cost report. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports will be assumed to be ineligible for disproportionate share (DSH) payments. Hospitals will only be considered for DSH payments if their disproportionate share qualification documentation is returned timely. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments for non-state operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital.

F. - I. ...

III. Reimbursement Methodologies

A. ...

B. Small Rural Hospitals

1. - 1.g....

h. has no more than 60 hospital beds or has notified the Department of Health and Hospitals as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located, as measured by the 2000 census:

i. in a municipality with a population of less than 13,000; and

ii. in a parish with a population of less than 32,000.

2. - 3. ...

4. A pro rata decrease necessitated by conditions specified in I.B. above for rural hospitals described in this section will be calculated using the ratio determined by dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals described in this section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state appropriated DSH amount. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the Department. Recoupments shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

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

Interested persons may submit written comments to Ben A. Bearden at the following address: Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Monday, November 25, 2002 at 9:30 am 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 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: Disproportionate Share Hospital
Payment Methodologies C Final Payment and
Small Rural Hospitals**

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

It is anticipated that there will be no estimated costs to the state as a result of implementation of this proposed Rule. It is anticipated that \$228 (\$114 SGF and \$114 FED) will be expended in SFY 2002-03 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that implementation of this proposed Rule will have no effect on federal revenue collections.

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

Implementation of this proposed Rule will not have estimable costs and/or economic benefits for directly affected hospitals as a whole, since the total of the disproportionate share payments is limited to the amounts appropriated. However, the amount of disproportionate share payments made to individual hospitals may either increase or decrease as payments are limited to total amounts appropriated for this purpose. Hospitals that fail to timely file Medicare cost reports will be assumed to be ineligible for disproportionate share (DSH) payments.

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

There is no known effect on competition and employment.

Ben A. Bearden
Director
0210#059

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Early and Periodic Screening, Diagnosis and Treatment
Program Psychological and Behavioral Services
(LAC 50:XV.Chapter 79)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:XV.Chapter 79 governing Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) psychological and behavioral services in 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 provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage for an extensive range of medical services, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services for Medicaid recipients up to the age of 21. As a result of a lawsuit, the Department was ordered to make available to class members with autism appropriate psychological and behavioral services. The bureau adopted an Emergency Rule to establish the provisions governing average and reimbursement services for psychological and behavioral services under the EPSDT Program (*Louisiana Register*, Volume 28, Number 8). The bureau now proposes to proceed with administrative procedures to continue the provisions contained in the August 5, 2002 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972. It is anticipated that this proposed Rule will promote the health and welfare of Medicaid eligible children who have a diagnosis of autism or other pervasive developmental disorders by ensuring continued access to psychological and behavioral services.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program psychological and behavioral services.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part XV. Services for Special Populations

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

**Chapter 79. Psychological and Behavioral Services
§7901. Recipient Criteria**

A. In order to be eligible for services, a Medicaid recipient must be under the age of 21, be a member of the Chisholm lawsuit class and meet one of the following criteria:

1. have a diagnosis of Pervasive Developmental Disorder (PDD) according to a clinically appropriate diagnostic screening tool or other assessment; or

2. have an impaired functional status that can be addressed by psychological treatment on an instrument or other assessment of individual functioning that is appropriate for individuals with developmental disabilities; or

3. engage in behaviors so disruptive or dangerous that harm to others is likely (e.g., hurts or attempts to hurt others, such as hitting, biting, throwing things at others, using or threatening to use a weapon or dangerous object). Behaviors must be recurrent, not a single instance; or

4. engage in behaviors that have resulted in actual physical harm to the child himself/herself, such as bruising, lacerations or other tissue damage, or would result in physical harm if the child was not physically restrained. Behaviors must be recurrent, not a single instance. Behaviors are not the result of clinically suicidal intent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§7903. Covered Services

A. The following services, as identified by the accompanying Current Physicians' Terminology (CPT) procedure codes, are covered under EPSDT psychological and behavioral services:

1. necessary evaluations CCPT codes 90801 and 96100;

2. family education and training CCPT code 90847;

3. clinical interventions CCPT codes 90804 and 90806; and

4. periodic follow-up CCPT codes 90847, 90804, and 90806.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§7905. Provider Qualifications

A. In order to receive reimbursement as a Medicaid provider of EPSDT psychological and behavioral services, a psychologist must provide verification that he or she meet all of the following qualifications:

1. have a Ph.D;

2. be licensed to practice within the State of Louisiana; and

3. be professionally qualified to treat children, or to treat children and/or adults with PDD, including autism and/or developmental disorders.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§7907. Reimbursement Methodology

A. Reimbursement for EPSDT psychological and behavioral services shall be based on 70 percent of the allowable rate on the 2002 Medicare Fee Schedule for Area 1.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

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

Interested persons may submit written comments to Ben A. Bearden, 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 Monday, November 25, 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: Early and Periodic Screening,
Diagnosis and Treatment Program
Psychological and Behavioral Services**

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

It is anticipated that the implementation of this proposed rule will increase state program costs by approximately \$2,867,166 for SFY 2002-03, \$3,281,126 for SFY 2003-04 and \$3,379,560 for SFY 2004-05. It is anticipated that \$324 (\$162 SGF and \$162 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$7,033,032 for SFY 2002-03, \$8,048,730 for SFY 2003-04 and \$8,290,191 for SFY 2004-2005.

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

Appropriate psychological and behavioral services will be made available to approximately 2000 Medicaid recipients up to the age of twenty one, who have a diagnosis of autism or other pervasive developmental disorders and are a member of the Chisolm lawsuit class. Implementation of this proposed rule will increase payments to providers of psychological and behavioral services by approximately \$9,899,874 for SFY 2002-03, \$11,329,856 for SFY 2003-04 and \$11,669,751 for SFY 2004-05.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this rule could increase the participation of providers of psychological and behavioral services due to the addition of additional recipients of these services.

Ben A Bearden
Director
0210#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Pharmacy Benefits Management Program
Asthma and Diabetes Drugs and Supplies

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides reimbursement for prescription drugs under the Medicaid Program. In recent years Medicaid expenditures for prescription drugs have risen as a substantial percentage of the total Medicaid budget. In recognition of the need to ensure that the state delivers a medical assistance prescription drug program which is both cost effective and prudently administered, the Louisiana Legislature enacted Act 395 of the 2001 Regular Session to amend R.S. 46:153.3(B)(2)(a) which states "The Department may establish ... or any other process or combination of processes that prove to be cost-effective in the Medical Assistance Program." It is expected that the following proposed Rule, in conjunction with other drug program cost containment measures, will significantly reduce the growth of Medicaid expenditures for prescription drugs.

The department implemented a prior authorization process with a preferred drug list (PDL) for certain designated drugs in selected therapeutic classes covered under the Pharmacy Benefits Management Program through emergency rulemaking (*Louisiana Registers*, Volume 28, Numbers 5 and 9).

The Bureau of Health Services Financing has determined that it is cost effective to implement a limitation on provider participation in the Medicaid Program for the provision of asthmatic and diabetic prescribed drugs and supplies to designated recipients. The Centers for Medicare and Medicaid Services has approved the 1915(b)(4) waiver to limit the recipient's choice of providers.

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 may have a positive impact on the stability of the family with transportation issues since the pharmaceuticals and supplies can be delivered to the recipient's home.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing limits provider participation for the provision of asthmatic and diabetic prescribed drugs and supplies to designated recipients under the Medicaid Pharmacy Benefits Management Program.

Coverage of Prescribed Medications and/or Supplies

A. Certain categories of Medicaid recipients who have a chronic diagnosis of asthma or diabetes, and require

medications shall be limited to obtaining their asthmatic and/or diabetic prescriptions and supplies from one mail order pharmacy.

1. The limitation on choice of pharmacy will be mandatory for the following groups of recipients who are not receiving long term care services:

- a. Low Income Families with Children (formerly AFDC);
- b. Low Income Families with Children-related (LIFC);
- c. Supplemental Security Income (SSI); and
- d. SSI-related.

2. The following Medicaid recipients are exempt from the limitation and may continue to fill their prescriptions at participating Medicaid enrolled local pharmacies:

- a. recipients with Medicare coverage or other third party insurance with pharmacy benefits;
- b. recipients residing in a nursing facility or an Intermediate Care Facility for the Mentally Retarded;
- c. recipients whose eligibility period is less than three months (i.e. Medically Needy);
- d. recipients who are identified as Native Americans; and
- e. foster care children.

3. Pharmacy services received in a period for which Medicaid eligibility was retroactively established will also be excluded from the limitation.

B. Emergency prescriptions for exempt and non-exempt recipients shall continue to be filled by participating Medicaid enrolled local pharmacies according to the existing Medicaid Pharmacy Program policy and procedures.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, November 25, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Pharmacy Benefits Management ProgramC Asthma and Diabetes Drugs and Supplies

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

It is anticipated that the implementation of this proposed Rule (including the administrative cost of a professional services contract, staffing, and equipment relative to initial start-up as well as programmatic savings) will increase state fund expenditures by approximately \$430,097 for SFY 2002-03. It is anticipated that the implementation of this proposed

Rule will decrease state fund expenditures by approximately \$1,366,741 for SFY 2003-04, and \$2,595,875 for SFY 2004-05. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended for the state's administrative expense for promulgation of this proposed Rule and the final Rule in SFY 2002-03.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$322,485 for 2002-03 and will decrease federal revenue collections by approximately \$979,088 for SFY 2003-04, and \$1,863,827 for SFY 2004-05.

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

Implementation of this proposed Rule will limit certain recipients (approximately 137,000 Low Income Families with Children, Low Income Families with Children-related, Supplemental Security Income, and SSI-related) to one mail order pharmacy provider for asthma and/or diabetic prescriptions and supplies. This proposed Rule will decrease reimbursement for pharmacy services by approximately \$115,159 for SFY 2002-03, \$1,797,611 for SFY 2003-04, and \$2,784,647 for SFY 2004-05. It is anticipated that the implementation of this proposed Rule will not have an estimated cost or economic benefit to Medicaid recipients, except that the pharmaceuticals and supplies can be delivered to the recipient's home, providing an economic benefit for recipients with transportation issues.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this proposed Rule will eliminate competition as one mail order pharmacy provider (chosen through the Request for Proposal Process) will provide asthma and/or diabetic prescriptions and supplies to designated recipients. Some pharmacies may find it necessary to reduce staff as a result of the decrease in Medicaid reimbursement.

Ben A. Bearden
Director
0210#060

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Pharmacy Benefits Management Program
Catheters and Catheter Trays

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides coverage and reimbursement for indwelling catheters and insertion trays under the Pharmacy Benefits Management (PBM) Program and the Durable Medical Equipment (DME) Program. Currently, state-assigned procedure codes are used to bill for these medical supply items through the PBM Program. The new federal

regulations contained in the Health Insurance Portability and Accountability Act (HIPAA) require the use of National Drug Codes (NDCs) in billing for prescription drug services and medical supplies. Catheters and catheter trays do not have assigned NDCs. Therefore, the bureau proposes to amend the April 20, 1990 Rule governing coverage of prescription drugs and medical supplies to remove coverage and reimbursement for indwelling catheters and catheter trays from the Pharmacy Benefits Management Program. These medical supplies will continue to be covered and reimbursed under the DME Program and will be included in the national coding system mandated by HIPAA for medical supplies and equipment.

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

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends the April 20, 1990 Rule governing coverage of prescription drugs and medical supplies under the Pharmacy Benefits Management Program to remove the coverage of indwelling catheters and catheter trays. These medical supplies shall continue to be covered and reimbursed under the Durable Medical Equipment Program.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, November 25, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Pharmacy Benefits Management
ProgramC Catheters and Catheter Trays**

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

It is anticipated that there will be no estimated costs to the state as a result of implementation of this proposed Rule. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-03 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that implementation of this proposed Rule will have no effect on federal revenue collections.

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

Implementation of this proposed Rule will not have estimable costs and/or economic benefits for directly affected

persons or nongovernmental groups. Pharmacists will bill the Medicaid Durable Medical Equipment (DME) program instead of the pharmacy program for indwelling catheters and catheter trays. This should not increase costs to pharmacy providers as they are already accustomed to billing the DME program for other medical supplies and equipment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0210#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Records Management
(LAC 37:XI.2501)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Acting Commissioner of Insurance gives notice that rulemaking procedures have been initiated to adopt Insurance regulations.

The LDI considered the following laws, among others, and the intended action complies with the statutory law administered by the LDI: R.S. 44:1 et seq., R.S. 22:1 et seq.; R.S. 22:2.1.A; R.S. 14:67; R.S. 14:132, and R.S. 9:2601 et seq.

The Rule establishes that any public record maintained by the commissioner of insurance may be kept in any written, photographic, microfilm, or other similar form or method, or may be kept by any magnetic, electronic, optical, or similar form of data compilation that has reasonable safeguards against erasure or alteration, including the use of programs, methods, procedures and/or services that provide secured, portable document formats and digital signatures, and for which the Louisiana Department of Insurance has obtained the necessary license(s) and/or authorities to insure reasonable safeguards and/or authorities to insure reasonable safeguards against erasure or alteration.

Title 37

INSURANCE

Part XI. Rules

Chapter 25. Records Management

§2501. Records Management; General

A. Any public record maintained by the commissioner of insurance may be kept in any written, photographic, microfilm, or other similar form or method, or may be kept by any magnetic, electronic, optical, or similar form of data compilation that has reasonable safeguards against erasure or alteration, including the use of programs, methods, procedures and/or services that provide secured, portable document formats and digital signatures, and for which the Louisiana Department of Insurance has obtained the necessary license(s) and/or authorities to insure reasonable safeguards against erasure or alteration.

AUTHORITY NOTE: R.S. 49:950 et seq.; R.S. 44:1 et seq., R.S. 22:1 et seq.; R.S. 22:2.1.A; R.S. 14:67; R.S. 14:132; and R.S. 9:2601 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 29:

Family Impact Statement

1. Describe the effect of the proposed Rule on the stability of the family. The proposed Rule would have no impact on 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 rule should have no impact upon the authority and rights 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 Rule 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 Rule should have no impact on the family earnings and budget.

5. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. The proposed Rule should have no impact on the behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the ability of the family or local governmental unit to perform the function as contained in the rule. The proposed Rule should have no impact on the ability of the family or local governmental unit to perform the function as contained in the rule.

The Department of Insurance (LDI) will afford the public the opportunity to submit data, views, comments, or arguments, orally or in writing, on Tuesday, November 26, 2002 beginning at 10 a.m. in the Auditorium on the first floor of the Louisiana Department of Insurance, 950 North 5th Street, Baton Rouge, LA 70802, P.O. Box 94214, Baton Rouge, LA 70804-9214. If special accommodations are needed, either (1) write to the above address to the attention of Ms. Pat Hill, (2) contact Ms. Hill at (225) 342-3981, or (3) contact Ms. Hill at phill@ldi.state.la.us prior to Tuesday, November 26, 2002.

J. Robert Wooley
Acting Commissioner

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

RULE TITLE: Records Management

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

The Department of Insurance does not anticipate any implementation costs or savings as a result of the proposed Rule.

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

Adoption of the proposed Rule should have no effect on revenue collections by local or state governmental units. The proposed Rule does not eliminate or create any source of revenue for the state or for local governmental units.

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

There should be no costs savings or benefits to directly affected persons or non-governmental groups. The proposed Rule clarifies existing statutory law and provides for uniform, practicable requirements for form filing, review and approval under the Louisiana Insurance Code.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that this Rule would have any effect on employment or competition.

Chad M. Brown Deputy Commissioner Management & Finance 0210#065 Robert E. Hosse General Government Section Director Legislative Fiscal Office

NOTICE OF INTENT Department of Insurance Office of the Commissioner

Transmission of Forms and Documents (LAC 37:XL901)

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 and re-enact its existing Rule 12. This intended action complies with the statutory law administered by the Department of Insurance.

The proposed amendments are needed in order for the department to receive, via electronic transmission, forms, documents, applications, filings, financial reports and any other forms and types of documents required by law or voluntarily filed with the Commissioner of Insurance by any company regulated by the Office of the Commissioner.

Title 37 INSURANCE Part XI. Rules

Chapter 9. Rule Number 12C Transmission of Forms and Documents

§901. Transmission of Forms and Documents Filed with the Department of Insurance

A. All forms, documents, applications, filings, financial reports, and any and all other forms and types of documents required by law or voluntarily filed with the Commissioner of Insurance by any company regulated by the office of the commissioner shall be filed by depositing the same in the United States Mail, postage prepaid, and/or electronic transmission. Payment of fees, including license fees, and premium taxes shall be exempt from this rule.

B. No document of any sort or kind described in §901.A will be accepted or received by the personnel of the department as filed with the department unless the same is transmitted to the department via the United States Mail and/or electronic transmission.

C. Upon receipt of such documents mailed to the department, the employees of the department charged with the duty of receiving the same shall cause the envelope in which the document was mailed to the department to be attached to the document received in such a way that it shall remain permanently attached to the same, and no employee of the department may remove said envelope for any reason, except as provided for by law.

D. Transmission of documents by Facsimile machine, private courier service, or hand delivery is permissible as long as the originals are mailed in the United States Postal Service and received by the Department of Insurance on or

before the twentieth day after receipt of the facsimile transmission, private courier delivery, or hand delivery. A document received in accordance with §901 shall be deemed received on the date of the receipt of the original facsimile transmission, private courier delivery, or hand delivery. Any departmental approval shall be indicated on the initial facsimile transmission, private courier delivery, or hand delivery.

E. Notwithstanding §901.A through D, requests for public records shall be in accordance with procedures established for public records requests and record management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22.2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:1210 (December 1991), amended LR 18:620 (June 1992), LR 29:

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 Melinda L. Long, 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, November 26, 2002.

On November 26, 2002 at 9:00 a.m., the Department of Insurance will hold a public hearing in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, Louisiana, 70804 to discuss the proposed amendments as set forth.

J. Robert Wooley Acting Commissioner of Insurance

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Transmission of Forms and Documents

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

No implementation costs are anticipated as a result of the proposed amendments.

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

The Department of Insurance does not expect any increase or decrease in revenue collections by state or local governmental units as a result of the proposed amendments which neither create a new revenue source nor eliminate or decrease any.

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

Directly affected persons or non-governmental groups should experience no economic costs and/or benefits as a result of the proposed amendments because the proposed amendments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed amendments would have any impact upon employment or competition.

Chad M. Brown Deputy Commissioner Management and Finance 0210#095 Robert E. Hosse General Government Section Director Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Computation of Net Allocable Income from Louisiana Sources (LAC 61:I.1131)

Under the authority of R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1131 relative to the computation of net allocable income from Louisiana sources.

The primary purpose of this regulation is to update the corporation income tax regulation relating to the allocation of items of income and expense, and to make the regulation easier to understand. The current regulation, LAC 61:I.1130, has not been revisited in depth since the corporate income tax statutes were enacted in 1986. This regulation will provide more guidance on the treatment of intangible assets than the current regulation. In addition, this regulation will clarify the numerical example in the current regulation, and add several examples that explain the allocation of certain items of income and expense, such as the allocation of profits or losses from sales of intangible assets. Once this regulation becomes final, the Department of Revenue will repeal the current regulation, LAC 61:I.1130.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 11. Rule Number 14C Income Corporation Income Tax

§1131. Computation of Net Allocable Income from Louisiana Sources

A. Allocation of items of income and loss. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the states within which such items of income are earned or derived. The statute attributes every item of gross allocable income to a location and does not allow for any unallocated items of income. The principles embodied in the statute and this regulations are that items of allocable income from the sale, exchange, or use of tangible assets are allocated to the location of the tangible asset at the time of the transaction; income from the sale, exchange, or use of intangible assets are allocated to the business situs of the intangible asset, or in the absence of a business situs, to the commercial domicile of the corporation; and items of allocable income from services are allocated to the location at which the service was performed. Abandonment, involuntary conversion, casualty loss, or the total write off of an asset are among the transactions that will be considered a sale or exchange.

1. Rents and Royalties from Immovable or Corporeal Moveable Property, and Profits or Losses from the Sales and Exchanges of Capital Assets Consisting of Immovable or Corporeal Moveable Property

a. Rents and royalties from immovable or corporeal moveable property, and profits or losses from the sales and exchanges of capital assets consisting of immovable or

corporeal moveable property, shall be allocated to the state where such property is located at the time the income is derived.

b. Capital assets means all property of the taxpayer, except:

i. land used in a trade or business of the taxpayer; and

ii. the following assets of the taxpayer, whether or not the assets are connected with the taxpayer's trade or business:

(a). stock in trade of the taxpayer; or

(b). other property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the taxable year; or

(c). property held by the taxpayer primarily for sale to customers in the regular course of its trade or business; or

(d). property used in a trade or business of a character which is subject to depreciation.

c. Rents or royalties from incorporeal immovables, such as mineral interests, are allocated to the state in which the property subject to the interest is located.

2. Interest on Customers' Notes and Accounts

a. Interest on customers' notes and accounts shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which ultimate delivery was made in the case of sale of merchandise or at the location at which the services were performed in the case of charges for services rendered.

b. A customer is a person who the taxpayer sells merchandise to or performs services for in the regular course of the taxpayer's trade or business.

3. Profits from Sales or Exchanges of Property not Made in the Regular Course of Business, Other than Sales or Exchanges of Capital Assets Consisting of Incorporeal Property or Rights

a. Both profits and losses from such transactions must be included in income allocated directly to the state in which the property had its business situs at the time of the transaction. Property will acquire a business situs if it has become an integral part of some business within the state.

b. Whether a sale or exchange is a sale not made in the regular course of business is a factual determination required to be made with respect to each property sold that will take into consideration such factors as the frequency of sales of similar properties and the relationship of the particular sale to other business transacted by the taxpayer.

c. The sale of a mineral lease, royalty interest, oil payment, or other mineral interest is allocated to the state in which the property subject to the mineral interest is located.

4. Interest, Dividends, and Profits or Losses from Sales and Exchanges of Capital Assets Consisting of Incorporeal Property or Rights

a. General Rule. Except as otherwise provided herein, interest, dividends, and profits or losses from sales and exchanges of capital assets consisting of incorporeal property or rights are allocated as follows:

i. if the securities or credits that produced the income, profits or losses have been so employed as to acquire a business situs, the items of income, profit or loss will be allocated to that business situs. Securities or credits

will acquire a business situs if they have become an integral part of some business within the state;

ii. securities or credits means any intangible property or right;

iii. if the securities and credits have not acquired a business situs, the items of income, profit or loss will be allocated to the corporation's commercial domicile;

iv. a security or credit may acquire a business situs in more than one state. The percentage of the profits or losses from the sale or exchange of an intangible asset that has more than one business situs that is to be allocated to Louisiana is a factual determination required to be made with respect to each property or right and will take into consideration such factors as:

(a). the number of locations at which the property or rights are used;

(b). the number of days during the tax year the property or rights were used within and without Louisiana;

(c). the amount of income the property or rights generated within and without Louisiana; and

(d). the earning power of the property or rights at the time of the sale or exchange;

(e). Example: Z Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. Z entered into an agreement with the ABC Corporation whereby ABC was given the exclusive right to use the patents at ABC's refineries in consideration for the payment of a royalty to Z based upon units of production. ABC used the patents in its refineries in Texas and Louisiana and paid Z for such use. Because the patents are used in both Louisiana and Texas and have become an integral part of a business in Texas and a business in Louisiana, the patents have acquired both a Texas business situs and a Louisiana business situs.

b. Profits from the sale or exchange of capital assets consisting of incorporeal property or rights shall be allocated to the state in which the securities or credits giving rise to the profits have their business situs.

i. Example: X company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. X entered into an agreement with the Y corporation whereby Y was given the exclusive right to use the patents at Y's refinery in consideration for the payment of a royalty to X based upon units of production. Y used the patents exclusively at its Louisiana refinery and paid X for such use. In 1997, X sold the patents to Z Company, Inc., also a Delaware corporation for a profit of \$7.5 million. Because the patents were used exclusively in Louisiana and have become an integral part of a Louisiana business, the patents have acquired a Louisiana business situs. Therefore, the profits from the sale are allocated entirely to Louisiana.

ii. Example: Z Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. Z entered into an agreement with the ABC Corporation whereby ABC was given the exclusive right to use the patents at ABC's refineries in consideration for the payment

of a royalty to Z based upon units of production. ABC used the patents in its refineries in Texas and Louisiana and paid Z for such use. In 2000, the royalty from the Texas refinery was \$300,000 and the royalty from the Louisiana refinery was \$700,000. In 2001, Z sold the patents to New Company, Inc., also a Delaware corporation, for a profit of \$10 million. The patents have acquired both a Texas business situs and a Louisiana business situs, therefore the profits from the sale will be allocated to both Louisiana and Texas. Without more facts, a reasonable method of determining how to allocate the profit between the states is to use the ratio of earnings in each state to total earnings. Using this method, 70 percent of the profits will be allocated to Louisiana, or \$7 million.

c. Exceptions

i. For special rules governing the taxable situs of stock canceled in corporate liquidations see R.S. 47:287.747.

ii. Dividends on stock that has a situs in Louisiana and that are received by a corporation from another corporation which is controlled by the former, through direct ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which the income from which the dividends are paid is earned.

(a). The amount of such income to be allocated to Louisiana may be determined by applying a ratio of Louisiana net income to net income.

(b). If the taxpayer can demonstrate that this method of allocation is materially in error, the taxpayer may use any reasonable method to determine the actual amount of income from which dividends paid is earned in Louisiana. The method used by the taxpayer must reflect the general principles that the income from which dividends are paid is book income and that dividends are deemed paid from current earnings to the extent that there are current earnings and then are paid from the earnings of the preceding year.

iii. Interest on securities and credits that have a situs in Louisiana and that is received by a corporation from another corporation controlled by the former through the direct or indirect ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, as follows.

(a). Real and Tangible Personal Property. For the purposes of this Section, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income which it produces.

(b). Average Values. For the purposes of this Section, the value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average of such property at the beginning and close of the taxable year, determined on a comparable basis.

(c). Value of Property to be Used

(i). The value of property to be used shall be determined using one of the following methods. The taxpayer will elect which method to use on the first return filed for the tax year that begins the year after these regulations take effect. Once made, the election is irrevocable, without the approval of the secretary upon the showing of good cause:

[a]. the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence; or

[b]. the value of property to be used is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business.

(ii). Any reserves reflected on the books of the taxpayer shall be deemed to be reasonable, subject to the right of the secretary to adjust the reserves when, in the secretary's opinion, an adjustment is necessary to reflect the fair value of the property.

(iii). The secretary may require a different method of valuation if the method elected by the taxpayer does not reflect the fair value of the property.

5. Royalties or Similar Revenue Received for the Use of Patents, Trademarks, Copyrights, Secret Processes, and Other Similar Intangible Rights

a. Royalties or similar revenue received for the use of patents, trademarks, copyrights, secret processes, and other similar intangible rights shall be allocated to the state or states in which such rights are used.

b. The use referred to is that of the licensee rather than that of the licensor.

c. Example: X Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. During 2000, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X Company, Inc. the amount of \$100,000 for such use. The entire royalty income of \$100,000 is allocable to Louisiana.

d. Example: ABC Company, Inc. is a trademark holding company incorporated in Delaware that owns certain trademarks relating to the sale of retail goods. In 1997, ABC entered into a licensing agreement with XYZ Retail Co. in which XYZ was authorized to use the trademark in exchange for consideration of royalty payments based on store sales. In 1998, XYZ used the trademark to promote the sale of retail goods in their stores in Louisiana. The royalty payment attributable to the Louisiana stores was \$250,000. ABC must allocate the royalty income of \$250,000 to Louisiana.

6. Income from construction, repair, or other similar services is allocable to the state or states in which the work is done.

a. The phrase other similar services means any work that has as its purpose the improvement of immovable property belonging to a person other than the taxpayer where a substantial portion of such work is performed at the location of such property.

i. It is not necessary that the services rendered actually result in the improvement of the immovable property.

ii. Mineral Properties. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property notwithstanding the fact that the well may have been dry.

b. Examples of other similar services include, but are not limited to:

- i. landscaping services;
- ii. the painting of houses;
- iii. the removal of stumps from farmland; and
- iv. the demolition of buildings.

B. From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the Louisiana income tax law which are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income.

1. Interest Expense

a. The approach set forth in these regulations for the allocation and apportionment of interest expense is based upon the concept of the fungibility of money and requires that interest expense ordinarily be allocated to all of the taxpayer's income-producing activities and properties, regardless of the specific purpose for which the borrowing was incurred; it does not directly require allocation of interest deductions to income. It is appropriate to associate part of the cost of money borrowed for a specific purpose to other purposes as well based on the following assumptions:

- i. money is fungible in that all of the taxpayer's activities and properties need funds;
- ii. the taxpayer's management has substantial flexibility in the source and use of its funds;
- iii. the creditors of the taxpayer look to its general credit for repayment and thereby subject the money loaned to the risk of all of the taxpayer's activities;
- iv. the use of money for one purpose frees funds for other purposes.

b. Interest Expense Applicable to Total Allocable Income

i. Interest expense which is applicable to assets which produce or which are held for the production of allocable income within and without Louisiana, shall be an item of deduction in determining net allocable income or loss.

ii. For purposes of this Section, assets which produce or which are held for the production of allocable income include but are not limited to investments in and advances or loans to affiliated corporations (other than normal trade accounts receivable) whether or not such investments, advances, or loans produce any income.

(a) The amount of interest which is applicable to such assets shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of assets which produce or which are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer.

(b). Although income exempt from Louisiana income tax, such as interest on U.S. government bonds and notes, is not taxable and is therefore not included in allocable income, the adjustment for the amount of interest expense applicable to assets producing such income is computed in the same manner as in the case of assets producing allocable income.

(i). For convenience of computation such assets are grouped with assets producing or held for the production of allocable income.

(ii). Whenever interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense which is attributable to such investments shall be limited to the amount of income derived from such investments.

(iii). The amount of interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments, determined without reference to the income therefrom, is that portion of the interest expense applicable to assets which produce or which are held for the production of allocable income, which the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all assets which produce or which are held for the production of allocable income.

c. Interest Expense Applicable to Louisiana Allocable Income. Interest expense which is applicable to assets which produce or which are held for the production of Louisiana allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana.

i. Except as otherwise provided, the amount of interest which is applicable to such assets shall be determined by multiplying the amount of interest expense allocated to total allocable assets, determined without reference to the income limitation in the case of investments in U.S. government bonds and notes held as temporary cash investments, by a ratio, the numerator of which is the average value of assets which produce or which are held for the production of Louisiana allocable income and the denominator of which is the average value of assets which produce or which are held for the production of allocable income within and without Louisiana.

ii. When Louisiana net apportionable income is determined on the separate accounting method, refer to §1132.C.1 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

d. Louisiana Commercial Domicile

i. Investments in Stock of Controlled Corporations. When a corporation has a Louisiana commercial domicile and holds stock in corporations controlled by direct ownership of 50 percent or more of the voting stock of the latter, the stock shall be included in the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.

(a). This stock is to be attributed as Louisiana assets on the basis of the proportion of the respective amounts of income earned within Louisiana to the income earned everywhere of the controlled corporation.

(b). Stock held in corporations exempt from Louisiana income tax shall not be included as a Louisiana asset for the purpose of this computation.

ii. Advances to Controlled Corporations. When a corporation has a Louisiana commercial domicile and advances interest-bearing funds to corporations controlled by direct or indirect ownership of 50 percent or more of the voting stock of the latter, the receivable shall be included in

the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.

(a). These receivables are to be attributed as Louisiana assets on the basis of the ratio of the value of the controlled corporation's real and tangible personal property located in Louisiana to the value of such property within and without Louisiana.

(b). For the purpose of the allocation, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income which it produces.

e. Receivables Resulting from Advances of Non-Interest Bearing Funds

i. Receivables resulting from advances of non-interest bearing funds are deemed to be assets producing or held for the production of allocable income for the purpose of determining the amount of interest expense applicable to assets which produce or which are held for the production of allocable income from sources within and without Louisiana.

ii. When receivables resulting from advances of non-interest bearing funds have a Louisiana business situs, or, in the absence of a business situs, the lending corporation has a Louisiana commercial domicile, such receivables shall not be included in the numerator of the interest expense allocation formula for the purpose of §1131.B.1.c, unless the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

f. Average Value

i. The value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average of such property at the beginning and close of the year, determined on a comparable basis.

ii. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by the number of months in the tax period.

g. Value of Property to be Used

i. The value of property to be used shall be determined using one of the following methods. The taxpayer will elect which method to use on the first return filed for the tax year that begins the year after these regulations take effect. Once made, the election is irrevocable, without the approval of the secretary upon the showing of good cause.

(a). The value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence; or

(b). The value of property to be used is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business; or

(c). The value of property to be used is the value reflected on the taxpayer's books, so long as the value is not below zero.

ii. Any reserves reflected on the books of the taxpayer shall be deemed to be reasonable, subject to the right of the secretary to adjust the reserves when, in the

secretary's opinion, an adjustment is necessary to reflect the fair value of the property.

iii. The secretary may require a different method of valuation if the method elected by the taxpayer does not reflect the fair value of the property.

iv. Intangible assets that produce or that are held for the production of allocable income within and without Louisiana may acquire a business situs in more than one state. The percentage of the value of the asset that is to be attributed to Louisiana is a factual determination required to be made with respect to each asset and will take into consideration such factors as:

- (a). the number of locations at which the asset is used,
- (b). the number of days during the tax year the asset is used within and without Louisiana,
- (c). the amount of income that the asset generated within and without Louisiana, and

(d). the earning power of the asset at the time the interest expense is generated.

h. Example: The XYZ Corporation has incurred interest expense in the amount of \$150,000 during the year 2001. During 2001 it derived total allocable income and Louisiana allocable income as follows.

	Louisiana	Total
*Interest on U.S. Treasury notes	\$0	\$10,000
Interest (interest bearing checking)	\$0	\$,000
Dividends	\$0	\$ 5,000
Net rent income	\$10,000	\$10,000
Trademark royalty income	<u>\$ 4,000</u>	<u>\$10,000</u>
Total	<u>\$14,000</u>	<u>\$40,000</u>

*Treated as allocable income only for convenience in computing the applicable expense.

i. Its assets, liabilities, and net worth as of January 1, 2001, and December 31, 2001, were as follows.

	1-1-01	12-31-01
Assets:		
Cash (currency on hand)	\$ 10,000	\$ 10,000
Cash (non-interest bearing checking)	\$ 90,000	\$ 140,000
Cash (interest bearing checking)	\$ 110,000	\$ 220,000
Accounts receivable	\$ 780,000	\$ 800,000
Inventories	\$ 600,000	\$ 1,000,000
Stocks	\$ 100,000	\$ 100,000
Trademark	\$ 80,000	\$ 80,000
U.S. Treasury Notes	\$ 310,000	\$ 430,000
Real estate (rental property)	\$ 100,000	\$ 100,000
Less depreciation reserve	<u>\$ 20,000</u>	<u>\$ 25,000</u>
Net	\$ 80,000	\$ 75,000
Real estate	\$5,000,000	\$5,125,000
Less depreciation reserve	<u>\$1,080,000</u>	<u>\$1,300,000</u>
Net	<u>\$3,920,000</u>	<u>\$ 3,825,000</u>
Total Assets	<u>\$6,080,000</u>	<u>\$6,680,000</u>
Liabilities and Net Worth:		
Accounts payable	\$ 400,000	\$1,000,000
Bonds	<u>\$3,000,000</u>	<u>\$3,000,000</u>
Total Liabilities	\$3,400,000	\$ 4,000,000
Capital stock	\$2,080,000	\$2,080,000
Earned surplus	<u>\$ 600,000</u>	<u>\$ 600,000</u>
Net worth	<u>\$2,680,000</u>	<u>\$ 2,680,000</u>
Total Liabilities and Net Worth	<u>\$6,080,000</u>	<u>\$6,680,000</u>

ii. The amount of interest which is applicable to the assets which produce or are held for the production of

allocable income within and without Louisiana is \$18,633, determined as follows.

	Allocable Assets		Total Assets	
	1-1-01	12-31-01	1-1-01	12-31-01
U.S. Treasury Notes	\$ 310,000	\$ 430,000	\$ 310,000	\$ 430,000
Cash (interest bearing checking)	\$ 110,000	\$ 220,000	\$ 110,000	\$ 220,000
Rental property (net)	\$ 80,000	\$ 75,000	\$ 80,000	\$ 75,000
Stock	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
Trademark asset	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000
Other assets	<u>\$0</u>	<u>\$0</u>	<u>\$5,400,000</u>	<u>\$ 5,775,000</u>
Totals	\$ 680,000	\$ 905,000	\$6,080,000	\$ 6,680,000
1-1-01 totals		<u>\$ 680,000</u>		<u>\$ 6,080,000</u>
Totals		<u>\$1,585,000</u>		<u>\$12,760,000</u>
Average		<u>\$ 792,500</u>		<u>\$ 6,380,000</u>
Ratio				.12422
Interest expense allocated to total allocable assets (.12422 X \$150,000)				<u>\$ 18,633.00</u>

iii. The amount of interest expense which is applicable to the assets which produce or are held for the production of Louisiana allocable income is \$2,668.62, determined as follows.

Louisiana Allocable Assets	
January 1, 2001 – Rental property	\$ 80,000
**January 1, 2001 – Trademark asset	\$ 32,000
December 31, 2001 – Rental property	\$ 75,000
**December 31, 2001 – Trademark Asset	<u>\$ 40,000</u>
Total	<u>\$ 227,000</u>
Average Louisiana allocable assets	\$ 113,500
Average total allocable assets	\$ 792,500
Ratio of Louisiana average to total average allocable assets	.14322
Interest expense allocated to total allocable assets	\$18,633.00
Interest expense allocated to Louisiana allocable assets (.14322 x \$18,633.00)	<u>\$ 2,668.62</u>

**For purposes of this example, it has been assumed that the ratio of trademark royalties for the prior month from Louisiana sources to total trademark royalties for the prior month is representative of the value of the asset attributable to Louisiana at balance sheet date. In December 2000, Louisiana trademark royalties were \$480 and total trademark royalties were \$1,200. In December 2001, Louisiana trademark royalties were \$550 and total trademark royalties were \$1,100.

2. Overhead Expense

a. Overhead Expense Attributable to Total Gross Allocable Income Derived from Rent of Immovable or Corporeal Movable Property or From Construction, Repair, or Other Similar Services.

i. Overhead expense attributable to total gross allocable income derived from rent of immovable or corporeal movable property or from construction, repair, or other similar services shall be deducted from such income for the purposes of determining net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying total overhead expense by the arithmetical average of two ratios, as follows:

(a). the ratio of the amount of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross income derived from all sources.

(b). the ratio of the amount of direct cost incurred in the production of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of gross income from all sources.

ii. Overhead expense attributable to Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services shall be deducted from such income for the purposes of determining Louisiana net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying overhead expense attributed to total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair

or other similar services by the arithmetical average of two ratios, as follows:

(a). the ratio of the amount of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross allocable income from such sources.

(b). the ratio of the amount of direct cost incurred in the production of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of such income.

b. Overhead Expense Attributable to All Other Items of Gross Allocable Income

i. Overhead expense attributable to items of gross allocable income derived from sources within and without Louisiana, except gross allocable income from rent of immovable or corporeal movable property or from construction, repair or other similar services, may be determined by any reasonable method which clearly reflects net allocable income from such items of income.

ii. In attributing overhead expense to items of gross allocable income that are passive in nature, including but not limited to dividends and investment interest, the taxpayer or the Secretary may estimate the actual expenses attributable to such income by multiplying the passive income by two percent. Either the secretary or the taxpayer may require the use of actual overhead if this estimate is materially in error.

3. Generally, direct and indirect expenses, other than interest expenses, attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses, other than interest expenses, sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be actual expenses attributed to such income.

C. This regulation shall not restrict the authority of the secretary to adjust the allocation of items of income and expense when the secretary determines that such adjustments are necessary in order to clearly reflect Louisiana income.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 29:

Family Impact Statement

The proposed adoption of LAC 61:I.1131, regarding the computation of net allocable income from Louisiana sources 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. The implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets.;
5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be submitted no later than 4:30 p.m., November 25, 2002. A public hearing will be held on November 26, 2002, at 2:30 p.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Computation of Net Allocable Income
from Louisiana Sources**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The implementation of this proposed regulation, which updates the corporation income tax regulation relating to the allocation of items of income and expense, will have no impact on the agency's costs.
The implementation of this proposed regulation will have no impact upon any local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There should be no effect on revenue collections for the state as a result of this proposed regulation.
There should be no effect on revenue collections of local governmental units as a result 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 that directly affect persons or non-governmental groups as a result of this proposed regulation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0210#064

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT
Department of Revenue
Policy Services Division**

Definition of Tangible Personal Property
(LAC 61:I.4301)

Under the authority of R.S. 47:301 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301 relative to the definition of *tangible personal property* for sales tax purposes.

These proposed amendments provide guidance regarding the definition of *tangible personal property* in R.S. 47:301(16) and describe items included in and excluded from that definition.

**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. ...

*Tangible Personal Property*C

a. R.S. 47:301(16)(a) defines *tangible personal property* as personal property that can be seen, weighed, measured, felt, touched, or is perceptible to the senses. The Louisiana Supreme Court has ruled that *tangible personal property* is equivalent to corporeal movable property as defined in Article 471 of the Louisiana Civil Code. The Louisiana Civil Code describes corporeal movable property as things that physically exist and normally move or can be moved from one place to another. Examples of *tangible personal property* include but are not limited to:

- i. durable goods such as appliances, vehicles, and furniture;
- ii. consumable goods such as food, cleaning supplies, and medicines;
- iii. utilities such as electricity, water, and natural gas; and
- iv. digital or electronic products such as "canned" computer software, electronic files, and "on demand" audio and video downloads.

b. Prepaid telephone cards and authorization numbers (for state sales or use tax purposes) and work products consisting of the creation, modification, updating, or licensing of canned computer software are specifically defined as *tangible personal property* by law.

c. Repairs of machinery, appliances, and equipment that have been declared immovable under Article 467 of the Louisiana Civil Code and things that have been separated from land, buildings, or other constructions permanently attached to the ground or their component parts as defined by Article 466 of the Louisiana Civil Code are treated as taxable repairs of *tangible personal property* under R.S. 47:301(14)(g).

i. Things are considered separated from an immovable when they are detached and repaired at a location off the customer's immediate property where the immovable is located or at the repair vendor's facility, even if that facility is on property owned, leased, or occupied by the customer. If the thing is detached from the immovable and repaired on the customer's immediate property, it is not considered separated from the immovable and the repair would not be subject to tax.

ii. The customer's immediate property is the tract of land that is owned, leased, or occupied by the customer where the immovable is located.

iii. Tracts of land owned, leased, or occupied by the customer that are separated only by a public road or right-of-way from the land where the immovable is located are also considered the customer's immediate property.

d. Tangible personal property does not include:

i. incorporeal property such as patents, copyrights, rights of inheritance, servitudes, and other legal rights or obligations;

ii. work products presented in a tangible form that have worth because of the technical or professional skills of the seller. Work products are considered non-taxable technical or professional services if the tangible personal property delivered to the client is insignificant in comparison to the services performed and there is a distinction between the value of the intangible content of the service and the tangible medium on which it is transferred. These do not include items that have intrinsic value, like works of art, photographs, or videos. Also, documents that are prepared or reproduced without modification are considered tangible personal property. Examples of sales of technical or professional services that are transmitted to the customer in the form of tangible personal property include but are not limited to:

- (a). audience, opinion, or marketing surveys;
- (b). research or study group reports;
- (c). business plans; and
- (d). investment analysis statements;

iii. immovable property defined by the Louisiana Civil Code, which includes:

- (a). tracts of land (La. Civil Code Article 462);
- (b). component parts of a tract of land when they belong to the owner of the land (La. Civil Code Article 463);
- (c). buildings and standing timber even when owned by someone other than the owner of the land (La. Civil Code Article 464);

(d). things, such as building materials, incorporated into a tract of land or incorporated into a building or other construction that belongs to the owner of the land and is an integral part of the immovable (La. Civil Code Article 465);

(e). things permanently affixed to a building or other construction so that they cannot be removed without substantially damaging them or the immovable to which they are attached (La. Civil Code Article 466); and

(f). except when being repaired as defined by R.S. 47:301(14)(g), machinery, appliances, and, equipment that have been declared immovable by the owner in the parish conveyance records (La. Civil Code Article 467).

e. For sales tax purposes, buildings are structures that are permanently affixed to the ground, not necessarily intended for habitation, and include, but are not limited to, office buildings, homes, apartments, and stores.

f. Constructions, other than buildings, permanently attached to the land are movables when they belong to someone other than the owner of the land. Examples of this include, but are not limited to, towers, signs, and fences.

g. Items specifically excluded from the definition of *tangible personal property* include:

- i. stocks, bonds, notes, or other obligations or securities;
- ii. gold, silver, or numismatic coins of any value;
- iii. platinum, gold, or silver bullion having a total value of \$1,000 or more;
- iv. proprietary geophysical survey information or geophysical data analysis furnished under a restrictive use agreement even if transferred in the form of tangible personal property;

v. parts and services used in the repairs of motor vehicles if all of the following conditions are met:

(a). the repair is performed by a dealer licensed by the Louisiana Motor Vehicle Commission or the Louisiana Used Motor Vehicle and Parts Commission;

(b). the repair is performed subsequent to the lapse of an original warranty that was included in the taxable price of the vehicle by the manufacturer or the seller;

(c). the repair is performed at no charge to the owner; and

(d). the repair charge is not paid by an extended warranty plan that was purchased separately.

vi. pharmaceuticals administered to livestock used for agricultural purposes as defined by the Louisiana Department of Agriculture and Forestry under LAC 7:XXIII.103; and

vii. work products of persons licensed under Title 37 of the Louisiana Revised Statutes such as legal documents prepared by an attorney, financial statements prepared by an accountant, and drawings and plans prepared by an architect or engineer for a specific customer. However, if these items are reproduced without modification, they are considered *tangible personal property* and subject to sales or use tax.

h. Manufactured or mobile homes purchased in or delivered from another state to Louisiana after June 30, 2001, are excluded from the definition of *tangible personal property* for state sales or use taxes. Manufactured or mobile homes purchased in or delivered from another state to Louisiana after December 31, 2002, are excluded from the definition of *tangible personal property* for local sales or use taxes when the buyer certifies the manufactured or mobile home will be used as a residence.

i. For state sales taxes, the entire price paid for used manufactured or mobile homes and 54 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax.

ii. For local sales taxes when the buyer certifies the manufactured or mobile home will be used as a residence:

(a). after December 31, 2002, and before January 1, 2004C 25 percent of the price paid for used manufactured or mobile homes and 13 1/2 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax;

(b). after December 31, 2003, and before January 1, 2005C 50 percent of the price paid for used manufactured or mobile homes and 27 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax;

(c). after December 31, 2004, and before January 1, 2006C 75 percent of the price paid for used manufactured or mobile homes and 40 1/2 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax; and

(d). after December 31, 2005C the entire price paid for used manufactured or mobile homes and 54 percent of the price paid for new manufactured or mobile homes are

excluded from the definition of *tangible personal property* and not subject to tax.

iii. Manufactured or mobile homes are structures that are transportable in one or more sections, built on a permanent chassis, designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and include plumbing, heating, air-conditioning, and electrical systems. The units must be either 8 body feet or more in width or 40 body feet or more in length in the traveling mode, or at least 320 square feet when erected on site. These size requirements may be disregarded if the manufacturer voluntarily certifies to the distributor or dealer at the time of delivery that the structure conforms to all applicable federal construction and safety standards for manufactured homes.

iv. Manufactured or mobile homes do not include modular homes that are not built on a chassis, self-propelled recreational vehicles, or travel trailers.

i. The sale or purchase of custom computer software on or after July 1, 2002, and before July 1, 2005, is partially excluded, and on or after July 1, 2005, completely excluded, from the definition of *tangible personal property* under R.S. 47:301(16)(h). This exclusion applies to state sales tax, the sales tax of political subdivisions whose boundaries are coterminous with the state, and the sales tax of political subdivisions whose boundaries are not coterminous with the state that exempt custom computer software by ordinance as authorized by R.S. 47:305.52. Custom computer software is software that is specifically written for a particular customer or that adapts prewritten or "canned" software to the needs of a particular customer.

i. Before July 1, 2002, purchases of prewritten or canned software that are incorporated into and resold as a component of custom computer software before July 1, 2002, are considered purchases of *tangible personal property* for resale. Use tax is not due on these purchases and any sales tax paid is eligible for tax credit against the tax collected on the retail sale of the custom software.

ii. Phase-In Period—the sales tax exclusion for custom computer software will be phased in at the rate of 25 percent per year beginning on July 1, 2002. During the phase-in period, purchases of prewritten or canned software that are incorporated into and resold as a component of custom computer software will be considered a purchase for resale according to the applicable sales tax exclusion percentage in effect at the time of sale. The custom software vendor must pay sales tax on the purchase price of the canned software and may claim tax credit for the percentage that is resold as *tangible personal property*. If 75 percent of the sales price of the custom computer software is taxable, the vendor is allowed a tax credit for 75 percent of tax paid on the canned software purchase. Conversely, if sales tax was not paid by the custom software vendor on the purchase of canned software that is incorporated into custom software, use tax will be due on the percentage that is not considered to be a purchase for resale. The sales tax exclusion percentage will increase each year during the phase-in period and guidelines on the phase in of this exclusion will be published in a Revenue Ruling.

iii. July 1, 2005—the purchase of prewritten or canned software that is incorporated into and resold as a component of custom computer software sold on or after

July 1, 2005, will be considered the purchase of *tangible personal property* for the personal use of the custom software vendor and subject to sales or use tax.

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 Department of Revenue and Taxation, 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 28:1488 (June 2002), LR 29:

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., Friday, November 22, 2002. A public hearing will be held on Monday, November 25, 2002, at 2 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: Definition of Tangible Personal Property

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

Implementation of this proposed regulation, which clarifies the definition of tangible personal property for sales tax purposes, will have no impact on state or local agencies' costs.

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

There should be no effect on revenue collections of state or local governmental units as a result of this proposed regulation.

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

This proposed regulation would have no effect on the costs or economic benefits to vendors, manufacturers, or purchasers of tangible personal property in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0210#037

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Offset of Individual Income Tax Refunds
Against Debts Owed Certain Persons
(LAC 61:I.1306)**

Under the authority of R.S. 47:299.34 and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1306 relative to the offset of individual income tax refunds against debts owed certain persons.

Revised Statute 47:299.31 et seq. permits certain persons owed child support to make a claim against any income tax refund due to an individual who has failed to provide child support payments required by an order and against whom a judgment has been rendered. The secretary is authorized by R.S. 47:299.34 to establish a reasonable and efficient system for permitting a claim of offset by a claimant. This proposed rule provides the requirements for submitting offset claims including the information that must be submitted, the time limits for submitting claims, and the method of making remittances to the claimant.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 13. Income: Personal

§1306. Offset of Individual Income Tax Refunds

Against Debts Owed Certain Persons

A. The claimant must submit a written offset claim with a certified copy of the judgment that makes past-due payments under a child-support award executory. The claim must be submitted before participation in the program and by December 1 each year thereafter. After the first year of participation, a copy of the claim and judgment can be submitted if the information requested in Subsection B has not changed.

B. For each offset claim, the claimant must provide the following information:

- 1. the name of the debtor;
- 2. the amount of offset claimed;
- 3. the social security number of the debtor;

4. the most current address of the debtor available to the claimant; and

5. any additional information requested that will facilitate identification of the debtor and processing of the offset claim.

C. Remittances will be made to the claimant within three months after the debtor has waived the right to contest the offset or final disposition by the claimant or by a court.

D. A fee for processing the claim will be withheld from each refund issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:299.34.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, LR 29:

Family Impact Statement

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.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409 or by fax to 225-219-2759. All comments must be received no later than 4:30 p.m., November 25, 2002. A public hearing will be held on Tuesday November 26, 2002 at 9 a.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Offset of Individual Income Tax Refunds
Against Debts Owed Certain Persons**

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

The implementation of this proposed regulation, which provides the requirements for submitting offset claims including the information that must be submitted, the time limits for submitting claims, and the method of making

remittances to the claimant, will have no impact on the agency's costs.

Implementation of this proposed regulation would have no impact upon any local governmental units.

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

There should be no impact on state or local revenue collections as a result of this proposed regulation.

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

This proposed regulation establishes a reasonable and efficient system for permitting a claim of offset by a claimant. There should be no costs or economic benefits that directly affect persons or non-governmental groups as a result of this proposed regulation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0210#078

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Sales Tax on Property Used in Interstate Commerce
(LAC 61:I.4420)**

Under the authority of R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.4420 relative to the sales tax exemption set forth in R.S. 47:305.50 for vehicles used in interstate commerce.

This proposed Rule provides guidance on the length of time vehicles must be used in interstate commerce in order to qualify for the exemption. It also discusses the consequences if a taxpayer claims the exemption at the time of purchase and subsequently does not qualify for the exemption.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the

Secretary of Revenue

Chapter 44. Sales and Use Tax Exemptions

§4420. Property Used in Interstate Commerce

A. R.S. 47:305.50(A) allows certain taxpayers to register trucks with a gross weight of 26,000 pounds or more, trailers to be used with such trucks, and contract carrier buses with the Office of Motor Vehicles of the Department of Public Safety and Corrections (OMV) without paying state or local sales or use tax. To qualify for the exemption, the taxpayer's activities must be subject to the jurisdiction of the United States Department of Transportation, and the taxpayer must certify to the OMV that the property will be used at least 80 percent of its total mileage in interstate commerce. The Department of Revenue and the OMV provide forms on which to make these certifications.

B. Any taxpayer who claims the exemption provided for in R.S. 47:305.50(A) must maintain records of the use of the

property in order to document that the property is used for at least 80 percent of its total mileage in interstate commerce.

1. If the documentation indicates that the property was not used during the one-year period following the date of its purchase for the required 80 percent or more of its total mileage in interstate commerce, the taxpayer will not qualify for the exemption and state and local sales or use tax will be due on the amount paid for the property at the rate that was applicable on the date the property was purchased, plus interest from the date the property was purchased to the date of the tax payment. The state portion of the tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the twentieth day of the month following the end of the one-year period in which the taxpayer fails to qualify for the exemption. The local portion of the tax must be reported and paid to the proper local taxing authority in accordance with their ordinances.

2. If, during any of the following one-year periods, the documentation indicates that the property was not used for the required 80 percent or more of its total mileage in interstate commerce, the taxpayer will no longer qualify for the exemption. If this occurs, state and local sales or use tax will be due on the lesser of the purchase price or fair market value of the property on the first day of the one-year period that it does not meet the 80 percent test. The tax will be calculated based on the rate in effect on the first day of the one-year period in which the taxpayer no longer qualifies for the exemption, plus interest from the date the tax is due to the date of tax payment. The state portion of the tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the twentieth day of the month following the end of the one-year period in which the taxpayer no longer qualifies for the exemption. The local portion of the tax must be reported and paid to the proper local taxing authority in accordance with their ordinances.

C. If the taxpayer fails to provide proper documentation, it will be presumed that the taxpayer does not qualify for the exemption and state and local sales or use tax will be due in accordance with Subsection B above.

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:305.50 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

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, Post Office Box 44098, Baton Rouge, Louisiana 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Thursday, November 21, 2002. A public hearing will be held on Monday, November 25, 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: Sales Tax on Property Used In Interstate
Commerce**

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

Implementation of this proposed rule will have no impact on state or local governmental units' cost. This proposal is being adopted to provide guidance on the sales tax exemption provided by R.S. 47:305.50 regarding vehicles used in interstate commerce.

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

There should be no effect on revenue collections of state or local governmental units as a result of this proposed regulation.

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

This proposed regulation would have no costs or economic benefits to businesses that acquire trucks of 26,000 pounds or more, trailers, and contract carrier buses when at least 80 percent of their usage occurs in interstate commerce.

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

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0210#038

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Child Care Assistance Program Repair and
Improvement Grants
(LAC 67:III.5102, 5103, and 5107)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 12, the Child Care Assistance Program.

To provide for the eligibility of more applicants, the agency proposes to expand the definition of a disabled adult to include an adult household member who is unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination. The agency intends to redefine a *Household* to include a disabled adult parent. The definitions of *Head of Household* and *Training and Employment Mandatory Participant* are being amended for grammatical reasons. An eligibility criterion is being added to the FIND Work Child Care participant to clarify that the household must include a child under the age of 13.

Pursuant to Act 152 of the 2002 First Extraordinary Session of the Louisiana Legislature, funds from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant were appropriated to expand the Repair and Improvement Grant Program in an effort to assist more providers with the cost of repairs and improvements that are needed to improve the quality of child care to either licensed or registered providers, or to those who have applied to become licensed or registered.

These changes were effected by Declaration of Emergency effective September 1, 2002. Authorization for emergency action in the expenditure of TANF funds is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter B. Child Care Assistance Program

§5102. Definitions

Head of Household Can an individual who may apply for child care assistance for a child that customarily resides more than half the time with him/her. The individual may be the parent of a child needing child care assistance or may be the adult household member with primary responsibility for the child's financial support and care if the child's parent is not living in the home, or is living in the home but is under age 18 and not emancipated by law, or is disabled and is unable to care for himself/herself and his/her child(ren) as verified by a doctor's statement or worker determination.

Household Ca group of individuals who live together, consisting of the head of household, that person's legal spouse or non-legal spouse (if the parent of a child in the

household), the disabled adult parent who is unable to care for himself/herself and his/her child(ren) who are in need of care, and all children under the age of 18 who are dependent on the head of household and/or spouse, including the minor unmarried parent (MUP) who is not legally emancipated and the MUP's children.

*Training or Employment Mandatory Participant (TEMP)*Ca household member who is required to be employed or attending a job training or educational program, including the head of household, the head of household's legal spouse or non-legal spouse (if the parent of a child in the household), the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) live with the MUP and the MUP's disabled parent/guardian who is unable to care for the MUP's child(ren) while the MUP goes to school/work.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Family Independence Work Program (FIND Work), as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/FIND Work participant's child care costs, up to the maximum amounts listed in §5109.B. The following eligibility criteria must be met.

1. The household must include a child in current need of child care services who is under the age of 13, or age 13 through 17 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified psychologist, or by receipt of Supplemental Security Income (SSI), or who is under court supervision.

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria.

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veteran's Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

B.4.a. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:

§5107. Child Care Providers

A. - F. ...

G The Child Care Assistance Program offers Repair and Improvement Grants to either licensed or registered providers, or to those who have applied to become licensed or registered, to assist with the cost of repairs and improvements necessary to comply with DSS licensing or

registration requirements and/or to improve the quality of child care services.

1. Effective September 1, 2002 the program will pay for 75 percent of the cost of such a repair or improvement, up to the following maximums.

a. For Class A centers the maximum grant amount will be equal to \$100 times the number of children listed in the licensed capacity, or \$10,000, whichever is less.

b. For Family Child Day Care Home (FCDCH) providers the maximum grant amount will be \$600.

c. These amounts may be adjusted at the discretion of the Assistant Secretary, based upon the availability of funds.

2. A provider can receive no more than one such grant for any state fiscal year. To apply, the provider must submit an application form indicating that the repair or improvement is needed to meet DSS licensing or registration requirements, or to improve the quality of child care services. Two written estimates of the cost of the repair or improvement must be provided and the provider must certify that the funds will be used for the requested purpose. If the provider has already paid for the repair or improvement, verification of the cost in the form of an invoice or cash register receipt must be submitted. Reimbursement can be made only for eligible expenses incurred no earlier than six months prior to the application.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193; Act 152, 2002 First Extraordinary Session, and Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule should have a positive impact on family stability, as more families may be eligible for child care assistance, based on the new definition of a disabled adult household member. The working parent of these households will no longer have to give up employment or job training because they can not afford to pay for child care.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule should have a positive impact on family functioning by providing child care assistance to these families. The working parent would not have to give up employment or job training. The expanded Repair and Improvement Grant Program will help to ensure that children receive quality child care services.

4. What effect will this have on family earnings and family budget? The Rule will have a positive impact on the family earnings and budget as families with a disabled adult household member may now be eligible for child care assistance and these services will no longer have to be paid for by the family. Additionally, the working parent of these households will no longer have to give up employment or job training because they can not afford to pay for child care.

NOTICE OF INTENT

Department of Social Services Office of Family Support

TANF Initiatives Early Childhood Supports and Services Program and Adult Education Basic Skills Training, and Job Skills Training and Retention Services (LAC 67:III.5507 and 5559)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III, Subpart 15, Chapter 55, §5559 Early Childhood Supports and Services, as a TANF Initiative and to amend §5507, Adult Education, Basic Skills Training, Jobs Skills Training and Retention Services Program.

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature, the agency will adopt a new TANF Initiative, Early Childhood Supports and Services Program (ECSS). The ECSS Program will function as a multi-agency network that identifies, screens, and refers eligible young children to the ECSS network for potential services in an effort to foster secure child/family relationships. The program will also develop effective means of prevention, assessment, and intervention related to developmental, social, and emotional factors affecting young children and their families.

Act 12 of the 2001 Regular Session of the Louisiana Legislature appropriated monies for implementation of the TANF Initiative, Adult Education, Basic Skills Training, Jobs Skills Training and Retention Services Program. The agency entered into a Memorandum of Understanding with the Workforce Commission to implement and administer the program. Pursuant to Act 152 of the 2002 First Extraordinary Session of the Louisiana Legislature and Act 13 of the 2002 Regular Session of the Louisiana Legislature, the agency entered into Memoranda Of Understanding with several additional agencies including Louisiana Community and Technical College System, Department of Economic Development, Department of Public Safety and Corrections, and Governor's Office of the Workforce Commission, to carry out the intended goals of this initiative. Therefore, the agency is amending §5507 to remove language regarding a specific TANF partner and in doing so, eliminates the need for future amendments to the Code should there be another change in the TANF partner.

Declarations of Emergency signed August 2 and August 14, 2002, effected the rules. The authorization for emergency action in the expenditure of TANF funds is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5507. Adult Education, Basic Skills Training, Job Skills Training and Retention Services Program

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to create programs to provide adult education, basic skills training, jobs skills training, and retention services to low-income

5. What effect will this have on the behavior and personal responsibility of children? Services targeting young children in child care facilities should improve with the expanded Repair and Improvement Grants Program as the percentage and maximum grant amounts will increase.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

Interested persons may submit written comments by November 26, 2002 to the following: Ann S. Williamson, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-9065. She is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on November 26, 2002, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, 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: Child Care Assistance Program Repair and Improvement Grants

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

The estimated costs of amending §5107 is \$1,069,952 for FY 02/03 and thereafter. Monies will be used to cover the cost of Repair and Improvement Grants to eligible child care providers to comply with DSS licensing or registration requirements and/or improve the quality of child care services. The revised definitions in §§5102 and 5103 will have minimal to no impact on costs. The cost of publishing rulemaking and printing policy and forms revisions are estimated to be \$5,180.

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

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

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

The proposed rule results in no costs to any persons or non-governmental groups and no economic benefit to non-governmental groups.

Eligible child care providers will benefit economically from revisions to the Repair and Improvement Grants by making more providers eligible and increasing the amount of the individual grants. The estimated economic impact to providers is \$1,069,952 in grant monies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed actions will have no impact on competition and employment.

Ann S. Williamson
Assistant Secretary
0210#090

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 152, 2002 First Extraordinary Session; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002), amended LR 29:

**§5559. Early Childhood Supports and Services
Program Effective August 2, 2002**

A. The Department of Social Services, Office of Family Support, shall enter into a Memorandum of Understanding or contracts to create programs to identify and provide supports and services to young children, ages 0-5, and their families who are at risk of developing cognitive, behavioral, and relationship difficulties. Services may include but are not limited to:

1. referral to appropriate supports and services provided by network members and other resources in the community;
2. case management;
3. clinical case management;
4. behavior modification;
5. counseling;
6. parent support groups;
7. training and technical assistance;
8. consultation to other providers and agencies;
9. infant mental health screening;
10. infant mental health assessment;
11. non-recurrent, short-term emergency intervention funds for use in a crisis situation; and
12. other services as specified in the Individualized ECSS Family Services Plan.

B. Services offered by providers meet one or more of the following TANF goals:

1. to provide assistance to needy families so that children can be cared for in their own home or the home of a relative;
2. to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; and
3. to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to at-risk families that include a child age 05 years, and who have earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

E. Services will be offered in the following parishes: Desoto, East Baton Rouge, Lafayette, Ouachita, St. Tammany, and Terrebonne. Services may be expanded into other parishes at the discretion of the assistant secretary based on the availability of funds and a determination of need.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule should have a positive impact on family stability as it will provide support and services to young children and their families who are at risk of developing cognitive, behavioral, or relationship difficulties, thereby contributing to 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 Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule should have a positive impact on family functioning by providing family members with counseling, behavior modification, parent support groups, infant mental health screening and assessment, etc. Services such as these should foster secure child/family relationships leading to stable family functioning.

4. What effect will this have on family earnings and family budget? The Rule will have no effect on family earnings and budget.

5. What effect will this have on the behavior and personal responsibility of children? Services targeting young children such as behavior modification, counseling, and infant mental health screening and assessment should positively impact the behavior and personal responsibility of the children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through November 26, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, Louisiana, 70804-9065.

A public hearing on the proposed Rule will be held on November 26, 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 Area Code 225-342-4120 (Voice and TDD).

Gwendolyn P. Hamilton
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: TANF InitiativesC Early Childhood
Supports and Services Program and Adult Education
Basic Skills Training, and Job Skills Training and
Retention Services**

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

The cost of implementing the TANF Initiative at §5559 and amending the existing initiative at §5507 is estimated to be \$19,750,000 for FY 02/03. The agency will enter into

Memoranda of Understanding with state agencies and other entities to provide services for the programs and funds for these services will be allocated from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant to the specified departments/agencies. The minimal cost of publishing rulemaking is approximately \$240. The total increase in expenditures of \$19,750,000 can be met with funds from Louisiana's TANF Block Grant. Future expenditures are subject to legislative appropriation.

There are no costs or savings to local governmental units.

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

Through interagency transfers, the Louisiana Community and Technical College System, Department of Economic Development, Governor's Office of Workforce Commission, Department of Public Safety and Corrections, and the Office of Mental Health, will receive increased revenues totaling \$19,750,000 to be expended in the provision of services.

There is no effect on revenue collection of local governmental units.

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

There is no immediate cost or economic benefit to any persons or non-governmental groups. However, the programs have a long-term goal of improving the economic situations of the targeted families.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule will have no impact on competition and employment.

Ann S. Williamson
Assistant Secretary
0210#089

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**TANF Initiatives C Individual Development Accounts
(LAC 67:III.1235 and 5555)**

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III, Subpart 15, Chapter 55, §5555 as part of the TANF Initiatives and to amend §1235 of the Family Independence Temporary Assistance Program (FITAP).

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature, the agency is implementing the Individual Development Account (IDA) Program, to provide asset and savings opportunities to low-income families for home ownership, post-secondary education, and small business capitalization, as well as provide financial management education. By enabling individuals to purchase a home, capitalize a business, or send a minor child or themselves to college, the IDA program will assist families in overcoming poverty and their dependence on public assistance. The agency will contract with qualified non-profit organizations, or state or local governments who work with non-profit organizations, to develop and administer the IDA Program for low-income families.

Additionally, the agency proposes to amend §1235 by revising the IDA excludable resource in FITAP, to coincide with federal regulations as stated in the new program.

The Rule was effected by a Declaration of Emergency signed July 1, 2002.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1235. Resources

A. Assets are possessions which a household can convert to cash to meet needs. The maximum resource allowable for an assistance unit is \$2,000. All resources are considered except:

1. - 20. ...

21. an Individual Development Account (IDA) which is a special account established in a financial institution for specific purposes. Only one IDA per assistance unit is allowed. The balance of the account cannot exceed \$6000, including interest, at any time. IDA funds may be used for one of three purposes. Withdrawal of funds for purposes other than those listed below shall be deemed as a countable resource. Effective July 1, 2002, IDA funds may be used for the following purposes only:

a. postsecondary educational expenses paid from an IDA directly to an eligible educational institution;

b. first home purchase C qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an IDA directly to the persons to whom the amounts are due; and

c. business capitalization C amounts paid from an IDA directly to a business capitalization account which is established in a federally-insured financial institution and is restricted to use solely for qualified business capitalization expenses.

A.22. - 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. 46:231.2, P.L. 106-387, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 27:736 (May 2001), LR 27:866 (June 2001), LR 28:1031 (May 2002), LR 29:

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

**§5555. Individual Development Account Program
Effective July 1, 2002**

A. OFS shall establish the Individual Development Account (IDA) Program to provide asset and savings opportunities to low-income families for specific purposes as well as provide financial management education. The agency will contract with qualified non-profit organizations, or state or local governments who work with non-profit organizations, to develop and administer the IDA Program for low-income families.

B. An IDA is a financial account established by, or on behalf of, an individual eligible for assistance to allow that individual to accumulate funds for specific purposes. Funds deposited into the account may be matched by the agency using Temporary Assistance For Needy Families (TANF) Block Grant funds. The balance of the account cannot exceed \$6000, including interest, at any time. Funds deposited by the individual into the account must be derived from earned income. All matching contributions must be deposited in a separate matching fund account and used in accordance with the purposes outlined in §5555.C. The program will also provide financial management and organization education to eligible families.

C. IDA funds may be used for the following qualified purposes only:

1. postsecondary educational expenses paid from an IDA directly to an eligible educational institution;
2. first home purchaseCqualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an IDA directly to the persons to whom the amounts are due; and
3. business capitalizationCamounts paid from an IDA directly to a business capitalization account which is established in a federally-insured financial institution and is restricted to use solely for qualified business capitalization expenses.

D. Definitions

*Eligible Educational Institution*C

a. an institution described in Section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections are in effect on the date of the enactment of this Subsection [enacted August 22, 1996].

b. an area vocational education school (as defined in Subparagraph (C) or (D) of Section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)), which is in any state (as defined in Section 521(33) of such Act [20 USCS §521(33)]), as such Sections are in effect on the date of the enactment of this Subsection [enacted August 22, 1996].

*Post-Secondary Educational Expenses*Ctuition and fees required for the enrollment or attendance of a student at an eligible education institution, and fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

*Qualified Acquisition Costs*Cthe costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

*Qualified Business*Cany business that does not contravene any law or public policy (as determined by the federal secretary of the Department of Health and Human Services).

*Qualified Business Capitalization Expenses*Cqualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

*Qualified Expenditures*Cexpenditures included in a qualified plan including capital, plant, equipment, working capital, and inventory expenses.

*Qualified First-Time Homebuyer*Ca taxpayer (and if married, the taxpayer's spouse), who has no present ownership interest in a principal residence during the 3-year

period ending on the date of acquisition of the principal residence to which this Subsection applies. Date of acquisition means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this Subparagraph applies is entered into.

*Qualified Plan*Ca business plan which:

- a. is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;
- b. includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and
- c. may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

*Qualified Principal Residence*Ca principal residence (within the meaning of Section 1034 of the Internal Revenue Code of 1986 [26 USCS §1034], the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence (determined in accordance with Paragraphs (2) and (3) of Section 143(e) of such Code [26 USCS §143(e)]).

E. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in homes of relatives.

F. Eligibility is limited to low-income families at or below 200 percent of the federal poverty level.

G. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; Act 1098, 2001 Reg. Session; Act 84, 2002 First Extraordinary Session; and Act 13, Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule should have a positive impact on family stability, as it will provide opportunities for low-income families to save and accumulate assets for home ownership, post-secondary education, and business capitalization thereby contributing to 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 rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule should positively impact the functioning of the family by increasing the educational level and earning potential of family members as well as providing for home ownership, all of which contribute to positive family functioning.

4. What effect will this have on family earnings and family budget? The long-term effect of providing families with a means to further their education, establish a home, or start up a business, should be an increase in family earnings and the subsequent budget.

5. What effect will this have on the behavior and personal responsibility of children? There will be no effect on the behavior and personal responsibility of the children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through November 26, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, Louisiana, 70804-9065.

A public hearing on the proposed Rule will be held on November 26, 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 Area Code 225-342-4120 (Voice and TDD).

Gwendolyn P. Hamilton
Secretary

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

**RULE TITLE: TANF InitiativesC Individual
Development Accounts**

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

Implementation costs for the Individual Development Account (IDA) Program are estimated to be \$2 million which includes actual funds that will be matched to participant savings, administrative fees (not to exceed 10 percent of the total expenditures), and the cost of publishing rulemaking and printing policy and forms revisions. Future expenditures are subject to legislative appropriation.

There are no costs or savings to local governmental units.

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

The Rule will have no impact on revenue collections of state or local governmental units.

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

Participating families will receive a four to one match on their savings contributions. This could result in program participants receiving as much as \$24,000 in matching funds based on the maximum allowable contribution by the participant of \$6,000. Additionally, the projected 250 participants will be provided with financial literacy education and training resulting in improved financial management skills thereby providing a positive impact on the family's budget.

The IDA Collaborative of Louisiana (IDACL), a partnership of financial institutions, community-development corporations, social service and community-based organizations, workforce development organizations and public agencies, will be paid administrative fees not to exceed 10 percent of the total allocation.

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

The proposed Rule will have some impact on competition and employment as IDACL will subcontract with several local and regional service providers to ensure statewide coverage for recruitment, enrollment, and provision of program services. These service providers will employ additional staff to provide case management and other direct support services to IDA program participants. Additionally, four administrative and

three non-administrative personnel will be employed directly by the IDACL to implement and administer the program.

Ann S. Williamson,
Assistant Secretary
0210#088

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Rehabilitation Services
Vocational Rehabilitation Services**

General Provisions (LAC 67:VII.Chapter 1)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) proposes to amend Sections 101, Agency Profile and Section 103, Enabling Legislation, Section 107 Applicant/Client Appeal Right, and Section 115, Financial of its Vocational Rehabilitation Policy Manual. In Section 101, Agency Profile and Section 103, Enabling Legislation, the agency is amending guidelines to remove the reference to the Blind Register from policy, as it is not mandated. In Section 107 Applicant/Client Appeal Rights, the agency is extending the required timeline for conducting an appeal and specifying when written notice of appeal rights must be provided to an applicant or consumer as per Federal Regulations 34 CFR Part 361.57 effective January 17, 2001. In Section 115, Financial, the agency is amending guidelines to distinguish between trial work and extended evaluation; clarify that personal assistance services are not based on economic need; and remove the RS-14 form from policy, but maintain the basic living requirement and other necessary policy required to determine a consumer's financial need for certain vocational rehabilitation services. This proposed Rule does not change the vocational rehabilitation services that are based on the agency's financial need policy.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. General Provisions

§101. Agency Profile

A. - H. ...

I. Data Collection. Staff shall ensure the provision of client and financial data necessary for the operation of the agency's information and financial system.

J. - T ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 25:1263 (July 1999), LR 29:

§103. Enabling Legislation

A. - C.1 ...

2. Act 19 of 1988 effected the merger of the Division of Rehabilitation Services with the Division of Blind Services to form Louisiana Rehabilitation Services.

3. Act 109 of 1984, R.S. 39:1595.3, and Act 291 of 1986, R.S. 39:1594(I), enacted and authorized the State Use Law.

4. Act 10 of 1994, R.S. 18:59(I)(2), 61(A)(1), 62(A), 103(A), enacted and authorized to provide for the implementation of the National Voter Registration Act of 1993.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:473 (May 1995), LR 25:1265 (July 1999), LR 29:

§107. Applicant/Client Appeal Rights

A. - A.1. ...

2. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the Order of Selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the administrative review appeal process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

3. In order to insure that an applicant/client is afforded the option of availing themselves of the opportunity to appeal agency decisions impacting their vocational rehabilitation case, written notification by the Counselor and/or Regional Manager must include:

A.3.a. - B.4. ...

5. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the Order of Selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the Mediation process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

6. In order to insure that an applicant/client is afforded the option of availing themselves the opportunity to appeal agency decisions impacting their vocational rehabilitation case, written notification by the Counselor and/or Regional Manager must include:

a. - f.(note) ...

C. Fair Hearing

1. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review, or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing must be conducted by an impartial hearing officer within 60 days of the initial written request. At the time the fair hearing is requested, the applicant/client shall be offered mediation as an option to resolve a dispute.

2. An Impartial Hearing Officer shall be selected on a random basis or by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation

Council. The Impartial Hearing Officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services within 30 days of completion of the hearing.

3. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the order of selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the fair hearing process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

4. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to pursue a fair hearing, written notification by the Counselor and/or Regional Manager must include:

C.4.a. - D.1. ...

2. The decision of the Impartial Hearing Officer will be final unless the applicant/client or the agency requests a review of the Impartial Hearing Officer's decision by making a written request to the Secretary of the Department of Social Services within 20 days of mailing the decision. The Secretary cannot delegate the responsibility for making this final decision to any other officer or employee of Louisiana Rehabilitation Services. The applicant/client and the agency shall be provided an opportunity to submit additional evidence and information relevant to the final decision.

D.3. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:189 (February 1995), LR 24:958 (May 1998), LR 25:1266 (July 1999), LR 26:1634 (August 2000), LR 29:

§115. Financial

A. - B.1. ...

2. LRS will consider, through budgetary analysis of assets, income, disability-related expenses and comparable services and benefits, the financial need of eligible individuals; individuals who are participating in trial work periods; and individuals under extended evaluations for purposes of determining the extent of the individual's participation in the costs of certain vocational rehabilitation services.

a. - a.x. ...

xi. personal assistance services provided simultaneously with any of the above-listed vocational rehabilitation services; (Examples include attendant, reader, scribe, interpreter, ASL, braille, notetaker, and adjustment/orientation and mobility training services.)

b.i. - viii. ...

ix. vocational and other training services, such as college/university and proprietary school training.

x. other goods and services not specifically identified in Clauses b.i. thru ix above.

xi. post-employment services consisting of the services listed above.

c. The only exception to item ix. above is as follows:

i. to preserve LRS' Continuity of Services provision in the Order of Selection, LRS exempted those eligible individuals who had an IWRP/IPE in effect prior to July 20, 1999, which is the date of the adoption of this rule change; therefore, Clause b.ix. above will only apply to those individuals who had an IWRP/IPE developed after July 20, 1999.

d. - h. ...

i. Simultaneously with the comprehensive assessment, at the annual review of the IPE, and at any time there is a change in the financial situation of either the client or the family, the counselor will perform a budget analysis for each client requiring vocational rehabilitation services as listed above in §115.B.2.b.i. - xi. The amount of client participation in the cost of their vocational rehabilitation program will be based upon the most recent budget analysis at the time the relevant IPE or amendment is developed.

3. State and Departmental Purchasing Procedures. All applicable state, departmental and agency purchasing policies and procedures must be followed.

3.a. - d. ii. ...

C. LRS shall determine an individual's financial need for certain vocational rehabilitation services based on the individual's disability related expenses, available assets, and the basic living requirement chart below.

The Basic Living Requirement (BLR)

Persons	Allowable BLR**
1	\$21,475
2	\$29,025
3	\$36,575
4	\$44,125
5	\$51,675
6	\$59,225
7	\$66,775
8	\$74,325
Other	

**For each additional person over 8, add \$3020.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:837 (August 1995), LR 25:1273 (July 1999), LR 27:212 (February 2001), LR 27:1561 (September 2001), LR 29:

Family Impact Statement

The Department of Social Services, Louisiana Rehabilitation Services hereby issues this Family Impact Statement: The proposed rule for the Vocational Rehabilitation Policy Manual Sections: 101, 103, 107 and 115, has no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

Interested persons may submit written comments for 40 days from the date of this publication to James Wallace, Director, Louisiana Rehabilitation Services, 8225 Florida Boulevard, Baton Rouge, LA 70806-4834. Mr. Wallace is responsible for responding to inquiries regarding the proposed rule.

Public Hearings will be conducted November 21, 2002, at 10:00 a.m., as follows, Baton Rouge, LRS Regional Office, 3651 Cedarcrest Avenue; Alexandria, LRS Regional Office, 900 Murray Street, Shreveport, LRS Regional Office, 1525

Fairfield Avenue; New Orleans, LRS Regional Office, 3500 Canal Street.

Individuals with disabilities who require special services should contact Judy Trahan, Program Manager, Louisiana Rehabilitation Services, at least 14 working days prior to the hearing if special services are needed for their attendance. For information or assistance, call 225-925-4131 or 1-800-737-2958, or 1-800-543-2099 for voice and TDD.

Gwendolyn Hamilton
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: General Provisions**

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

The cost of publishing rulemaking is approximately \$162.

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

There is no anticipated increase or decrease in revenue.

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

There is no anticipated impact of the proposed action on local governmental units. There is no anticipated Impact in workload and Paperwork requirements. LRS will continue to maintain existing levels of verification and documentation of applicants or consumers' appeal rights and of consumer's income, assets, and medical liabilities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact of the proposed action on competition and employment in either the public or private sector.

James Wallace
Director
0210#087

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Transportation and Development
Office of the Secretary**

Cash Management Plan
(LAC 70:I.101 and 103)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend Chapter 1 of Title 7 entitled "Cash Management Plan," in accordance with R.S. 48:251(D).

Title 70

TRANSPORTATION

Part I. Highway Construction

Chapter 1. Cash Management Plan

§101. Phased Funding

A. The department is authorized to utilize cash management on multi-fiscal year projects which exceed the contract limit established in R.S. 48:251. The department is authorized to allocate only sufficient appropriated funds in

any fiscal year to pay for anticipated actual contract obligations incurred in that fiscal year. A multi-fiscal year phased funding plan will be developed for each project approved by the secretary for phased funding. The phased funding plan will provide annual anticipated expenditure projections over the life of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:251.D.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the General Counsel, LR 24:1324 (July 1998), amended by the Office of the Secretary, LR 29:

§103. Project Eligibility for Phased Funding

A. In order to qualify for phased funding, the proposed project must be a multi-fiscal year project which exceeds the contract limit established in R.S. 48:251.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:251.D.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the General Counsel, LR. 24:1324 (July 1998), amended by the Office of the Secretary LR 29:

Family Impact Statement

The proposed adoption of this Rule 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:

1. The implementation of this proposed rule will have no known or foreseeable effect on the stability of the family.
2. The implementation of this proposed rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.
3. The implementation of this proposed rule will have no known or foreseeable effect on the functioning of the family.
4. The implementation of this proposed rule will have no known or foreseeable effect on family earnings and family budget.
5. The implementation of this proposed rule will have no known or foreseeable effect on the behavior and personal responsibility of children.
6. The implementation of this proposed rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Senior Attorney, P.O. Box 94245, Baton Rouge, LA 70804, Telephone (225) 237-1359.

Kam K. Movassaghi, P.E., Ph.D.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Cash Management Plan**

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

This is an amendment to the existing Rule establishing a Cash Management Plan in the department. The department anticipates no additional costs to the state to implement this

revised Rule. The Rule is being amended so that more projects qualify for the phased funding under the cash management plan, thereby enabling the department to more effectively use available cash. Implementation of the revised Rule will provide the department with the flexibility to sell the minimum amount of bonds required to meet project/program expenditures amounts and thus save interest costs that would otherwise accrue on obligated but unexpended cash balances.

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

The revised Rule will have no effect on the revenue collections of state or local governmental units. However, the projected reduction in cash balances anticipated from effective use of cash management principles will eventually also reduce the amount of interest earned by the state on obligated but unexpended cash balances.

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

The revised Rule will benefit directly affected persons and non-governmental groups insofar as more DOTD road construction projects will be initiated in a shorter span of time. This will eventually result in certain projects being completed earlier than currently estimated, thereby allowing the traveling public to enjoy the benefits of these transportation improvements sooner.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The revised Rule will not directly affect competition and/or employment.

John P. Basilica, Jr.
Undersecretary
0210#044

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Wild Quadrupeds Game Breeder's License
(LAC 76:V.107)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend the Section on white-tailed deer within the Game Breeder's License Rule.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§107. Game Breeder's License

A. - B.7. ...

8. Whitetail Deer or Other North American Deer

a. Except as specified herein, licenses will not be issued. Licenses will not be issued unless pens are completed and complete applications are received in the Wildlife Division Baton Rouge Office by 4:30 p.m. October 4, 2002. Pens must be inspected before a license will be issued. If at the time of inspection, pens do not meet the requirements of this Rule, a license will not be issued and the application will not be reconsidered. Persons with valid licenses issued prior to this prohibition will be "grandfathered" and licenses may be renewed if all requirements are met. Licenses cannot be transferred beyond immediate family (father, mother, brother, sister, husband, wife, son and daughter). A license may be transferred to an

immediate family member only if the pen remains in the original location. Qualified zoos, educational institutions and scientific organizations may be exempted on a case by case basis.

b. No license will be issued in metropolitan or urban areas. A rural environment is required to keep these animals. Qualified zoos, educational institutions and scientific organizations will be exempted on a case by case basis.

c. Single Animal: 5,000 square feet paddock or corral (For example: 50 feet wide x 100 feet long); increase corral size by 2,500 square feet for each additional animal; shelter required. Pen site must be well drained so as to prevent extended periods of standing water.

d. Materials: Chain link or other satisfactory woven wire, 12 gauge minimum, 8 feet high minimum. Welded wire is not acceptable.

e. Licensed game breeders are required to report all deaths of deer to a regional Wildlife Division office within 48 hours of the time of death and preserve the carcass as instructed by the Wildlife Division, but are encouraged to report the death sooner if possible.

B.9. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:171.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:631 (September 1988), amended LR 18:1134 (October 1992), LR 21:1355 (December 1995), LR 29:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, December 5, 2002.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

Thomas M. Gattle, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Wild Quadrapeds
Game Breeder's License**

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

There will be no implementation costs or savings to state or local governmental units.

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

The Department of Wildlife and Fisheries' revenue collections are estimated to decrease by \$800 in FY 02-03, \$1,000 in FY 03-04 and \$1,200 in FY 04-05. Revenue collection of local governmental units will not be impacted.

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

Persons that are interested in obtaining a game breeder's license in the future will not be able to obtain a license. Existing game breeder licensees who have a game breeder's license will be required to report deer deaths within 48 hours. Commercial alternative livestock farmers who raise deer to sell may experience a slight loss of income from reduced deer sales due to the prohibition on issuing new game breeder's licenses for deer. On the other hand, participants deer recreational activities and persons who provide goods and services to deer recreational activities participants will benefit, if the Rule is effective in preventing a chronic wasting disease (CWD) outbreak in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule is not expected to affect competition or employment in the short term.

James L. Patton
Undersecretary
0210#043

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office