

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators C Adult Education Programs Section (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to Bulletin 741, *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 of the age requirement for entering Adult Education programs will allow 16-year-old students, under certain conditions of waiver, to pursue adult education training in preparation for testing for the GED. The conditions of waiver for students to exit school to enroll in Adult Education programs are in response to Act 59 of the First Extraordinary Session of the 2002 Legislature.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (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 27:1005 (July 2001), LR 27:1181, 1182, 1183 (August 2001), LR 27:1512 (September 2001), LR 27:1674 (October 2001), LR 27:1832, 1833, 1840 (November 2001), LR 27:2086, 2095 (December 2001), LR 28:269, 272 (February 2002), LR 28:1724 (August 2002), LR 29:33 (January 2003).

Bulletin 741C Louisiana Handbook for School Administrators

1.124.00 The Adult Education program shall be administered by the State Department of Education (SDE) and operated by eligible entities as stipulated in Title II of the Workforce Investment Act. The State Department of Education shall certify adult education sites of instruction using procedures as approved by the State Board of Elementary and Secondary Education.

Refer to the Louisiana State Plan for Adult Education and R.S. 17:14 for administration of the program.

The parent, tutor, or other person responsible for the school attendance of a child who is under the age of 18 and who is enrolled in school beyond his sixteenth birthday may request a waiver from the local superintendent for the child

to exit school to enroll and attend an adult education program approved by SBESE. In the case of a child with no parent, tutor, or other person responsible for his school attendance, the local school superintendent may act on behalf of the student in making such a request if one or more of the following hardships exist and if appropriate documentation is on file at the local school board office:

- pregnant or actively parenting
- incarcerated or adjudicated
- institutionalized or living in a residential facility
- chronic physical or mental illness
- family and/or economic hardships

The local school superintendent or his/her designee may approve the request without requesting action from the State Board of Elementary and Secondary Education (SBESE). If the request to exit school to enroll in a SBESE approved adult education program is denied at the local level, a student may request the waiver from the Department of Education for approval by the SBESE with documentation of reason for denial at the local level.

* * *

Weegie Peabody
Executive Director

0301#018

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Radiographer Trainee Requirements
(LAC 33:XV.503, 573, 575, 577, 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 has amended the Radiation Protection regulations, LAC 33:XV.503, 573, 575, 577, 578, 579, and 590 (Log #RP031).

The 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 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 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.

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 29:34 (January 2003).

Subchapter B. Personal Radiation Safety Requirements for Radiographers

§573. Conducting Industrial Radiographic Operations

A. Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or, if the radiographer is a qualified instructor, a qualified radiographer trainee, as required by Subsection D of this Section. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

B. - C. ...

D. At temporary job sites each licensee or registrant shall provide, as a minimum, two-person crews. Such crews shall consist of at least two qualified radiographers or an approved instructor directly supervising a qualified radiographer trainee.

E. - E.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:1234 (August 2001), amended LR 28:1951 (September 2002), LR 29:34 (January 2003).

§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 29:34 (January 2003).

§577. Personnel Monitoring Control

A. No licensee or registrant shall permit an individual to act as a radiographer, instructor, or radiographer trainee unless, at all times during radiographic operations, each such individual wears a direct-reading pocket dosimeter, an alarm ratemeter, and either a film badge, an optically-stimulated luminescence dosimeter (OSL), or a thermoluminescent dosimeter (TLD), except that for permanent radiography facilities where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

B. - H.4. ...

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), 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 29:35 (January 2003).

§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 29:35 (January 2003).

§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 29:36 (January 2003).

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 29:36 (January 2003).

James H. Brent, Ph.D.
Assistant Secretary

0301#047

RULE

Office of the Governor Division of Administration Racing Commission

Net Slot Machine Proceeds (LAC 35:III.5737 and 5738)

Editor's Note: The original text in Section 5737 ("Commission Office") was moved to Section 5738 to allow slot machine subject matter to be consecutive. This information is being repromulgated in Section 5738 with no changes for informative purposes only.

The Louisiana State Racing Commission hereby adopts the following rule.

Title 35

HORSE RACING

Part III. Personnel, Registration and Licensing Chapter 57. Associations- Duties and Obligations §5737. Net Slot Machine Proceeds

A. The commission, pursuant to R.S. 27:354, finds that it is in the best interests of licensed associations, breeders associations, horsemen, and the state that the annual payments provided for in R.S. 27:361 be paid in monthly installments.

B. The definitions set forth in R.S. 27:353 are incorporated herein by reference.

C. Not later than the date on which an association installs slot machines at its facility, it shall open three separate checking accounts as provided for herein. One

account shall be a control bank account into which not less than 18 percent of the net slot machine proceeds for the activity month shall be deposited in sufficient time to be distributed or disbursed not later than the 20th day of the following month as required by these rules. The association shall also open two distinct interest bearing accounts, one for thoroughbred purse proceeds and one for quarter horse purse proceeds, into which the association shall make its deposits for purse supplements totaling 15 percent of net slot machine proceeds and from which funds, including interest earned, such purse supplements shall be made available as provided by law and these rules.

D. While an association is conducting live racing, the monies due to be paid pursuant to R.S. 27:361.B.(4)(a) shall be made available monthly for use as purses prior to the 20th day of the month following the month in which they are earned, during the current race meeting.

E. While an association is not conducting live racing, the monies due to be paid pursuant to R.S. 27:361.B.(4)(a) shall be deposited in the appropriate breed account either:

1. for accrual until the first day of the next live race meeting conducted by that association for that breed, at which time such accumulated monies, including interest, shall be used to supplement appropriate purses during that race meeting; or

2. with prior written agreement of the Louisiana HBPA for reimbursement to the association for actual funds advanced to supplement purses at a preceding race meeting in anticipation of the revenue to be earned from slot machines. However, an association shall not be reimbursed except from proceeds earned during the same annual period during which it advanced the purse supplements.

F. The monies due to be paid by an association pursuant to R.S. 27:361.B.(4)(b) and (c) shall be remitted monthly to the appropriate breeders association and the monies due to be paid by an association pursuant to R.S. 27:361.B.(4)(a)(i) and (ii) shall be remitted monthly to the HBPA, prior to the 20th day of the month following the month in which they are earned.

G. Each racing association conducting slot machine gaming shall file with the commission a complete report, on a form acceptable to the commission, not later than the 20th day of each month, setting forth the amounts deposited and payments made from the net slot machine proceeds earned the preceding month, as well as payments for purses and payments to breeders associations and to the HBPA. Copies of those bank accounts required to be maintained by Subsection C of this rule shall be submitted to the commission along with the monthly report.

H. Each racing association, after conducting slot machine gaming for 12 months, shall file an annual report with the commission, on forms acceptable to the commission, not later than the 20th day of the following month, and on that date each following year, which report shall certify under oath by a responsible officer the association's compliance with all requirements under R.S. 27:361.B.(4) and under this rule. Each such 12-month period shall constitute an annual period for the purposes of this rule.

I. All records and reports pertaining to slot machines, including checking accounts, maintained by an association shall be subject to inspection, reporting procedures and audits by the commission. All records and reports on

revenues and expenses from slot machines shall be included as part of the association's annual CPA opinion audit submitted to the commission.

J. Before receiving any payments provided by R.S. 27:361.B.(4)(b) or (c), the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission the schedule or formula and within a time period which it has established for the distribution of such funds. Any amendments or modifications to such distribution schedule or formula shall be filed with the commission within 30 days of its adoption by the Executive Committee. A true and complete copy of each such filing with the commission shall be delivered to each racing association and the filing shall so certify delivery. Each Executive Committee shall also file a monthly report with the commission of revenue received, payments made, and the bank balance on hand along with a copy of the bank statement.

K. After the expiration of one year from the filing of its first distribution schedule or formula with the commission but within 20 days thereafter, and on that date each following year, the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission a report which shall certify under oath by a responsible officer the association's compliance with its applicable distribution schedule or formula and within a time period which it has established for the distribution of such funds.

L. An association shall publicly disclose its schedule for the distribution of funds for purse supplements to be made pursuant to R.S. 27:361.B.(4)(a). Excluding those funds statutorily dedicated to races restricted to accredited Louisiana breeds, the remaining funds shall be distributed proportionately according to the conditions of the races in which the remaining funds are used to insure parity among restricted and non-restricted races.

M. Whenever it appears to the executive director of the commission that a violation may have occurred, he shall furnish the apparent violator with a warning letter, sent by ordinary mail and by fax, affording the party 15 days from the date of the transmission of the letter to correct the violation.

N. If the apparent violation has not been timely corrected, the executive director, or his designee, shall within 10 days give written notice, by certified mail, to the party that its responsible officers are to appear before him for an informal conference to determine whether a violation has occurred and, if so, whether the violation can be corrected in the absence of imposing a fine or indefinitely suspending the license of the party, or refusing to allow the party to receive payments under this rule. Such informal hearing shall be conducted in accordance with the Administrative Procedure Act applicable to such hearing.

O. If the executive director, or his designee, determines after affording the party an opportunity for an informal conference that a violation has occurred and that a fine, license suspension, or other appropriate action should be taken, he shall file a *rule to show cause* with the commission for the notified party and its responsible officers to appear before the commission and show cause why disciplinary

action or sanctions should not be imposed. The *rule to show cause* shall be forwarded by certified mail and by fax to the party. The cited party shall have 10 days from transmission, excluding holidays and weekends, to file with the commission a written response, under oath, and to submit a list of the names and addresses of all witnesses it desires to be subpoenaed for the hearing, including those to produce documents and other things. The failure to timely file a verified response may, in the commission's discretion, result in the cited party being refused to participate in the hearing on the *rule to show cause*.

P. At the conclusion of the hearing, the commission shall take action appropriate to the violation if it finds that one has occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:353, R.S. 27:354 and R.S. 27:361.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 29:36 (January 2003).

§5738. Commission Office

A. Each association shall provide and furnish an adequate office for the use of the commission.

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:435 (December 1976), LR 3:31 (January 1977), LR 4:278 (August 1978), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 29:38 (January 2003).

Charles A. Gardiner III
Executive Director

0301#017

RULE

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

Home/Community Based Service
Waiver Program Children's Choice
(LAC 50:XXI.11523)

Editor's Note: The Children's Choice Waiver portion of the Rule published in the December 2002 *Louisiana Register*, page 2533 entitled Provider Enrollment Requirement, is being reprinted in codified format.

Title 50 PUBLIC HEALTH MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers Subpart 9. Children's Choice Chapter 115. Providers Subchapter B. Provider Requirements §11523. Enrollment

A. ...

B. Providers shall attend all mandated meetings and training sessions as directed by BCSS as a condition of enrollment and continued participation as waiver providers. Attendance at a provider enrollment orientation shall be

required prior to enrollment as a Medicaid provider of services. The frequency of the provider enrollment orientations shall be determined by the Bureau of Community Supports and Services, but they shall be conducted at least semi-annually.

C. - N. ...

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 LR 28:1984 (September 2002), amended LR 28:2534, (December 2002), repromulgated LR 29:38 (January 2003).

David W. Hood
Secretary

0301#066

RULE

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 promulgates 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 Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

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. ...

David W. Hood
Secretary

0301#055

RULE

**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 amends 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 Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

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

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

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.

David W. Hood
Secretary

0301#052

RULE

**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 77)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 77 governing Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) psychological and behavioral services in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This promulgated Rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTHC MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening,
Diagnostic, and Treatment

Chapter 77. Psychological and Behavioral Services

§7701. 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 29:40 (January 2003).

§7703. 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 29:40 (January 2003).

§7705. 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 meets 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 29:40 (January 2003).

§7707. 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 29:40 (January 2003).

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

David W. Hood
Secretary

0301#051

RULE

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

Nursing Facilities Services Requirements
(LAC 50:II.10167)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Requirements for Payments

Chapter 101. Requirements for Nursing Facilities

Subchapter L. Sanctions and Appeal Procedures

§10167. General Provisions

A. - C.3.a.ii. ...

iii. Class C violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. The civil fine for a second Class C violation occurring within an 18-month period from the first violation shall not exceed \$2,000 per day. The third Class C violation may result in the initiation of proceedings to terminate the facility's Medicaid agreement and to revoke its license.

iv. - K.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 29:40 (January 2003).

David W. Hood
Secretary

0301#054

RULE

**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 promulgates 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 Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, 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. The following medical supplies shall be covered and reimbursed under the Durable Medical Equipment Program.

Service Description	Fee
Catheter and Catheter Tray	\$11.19
Catheter Tray	\$ 4.05
Catheter	\$ 7.14

David W. Hood
Secretary

0301#053

RULE

**Department of Insurance
Office of the Commissioner**

**Rule 12C Transmission of Forms and Documents
(LAC 37:XI.901)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the commissioner of Insurance has amended Rule 12, Informational Transmittal Rule.

The Department of Insurance hereby adopts and re-enacts this amended Rule to become effective upon publication of the January 2003 edition of the *Louisiana Register*. This action complies with the statutory law administered by the Department of Insurance.

**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), amended by the Department of Insurance, Office of the Commissioner, LR 29:41 (January 2003).

J. Robert Wooley
Acting Commissioner

0301#064

RULE

**Department of Insurance
Office of the Commissioner**

**Rule 14C 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 Administrative Procedure Act, R.S. 49:950 et seq., the Acting Commissioner of Insurance has adopted 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 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. Rule 14C 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 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 29:42 (January 2003).

J. Robert Wooley
Acting Commissioner

0301#015

RULE

**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, adopted 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 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 Department of Revenue, Policy Services Division, LR 29:42 (January 2003).

Cynthia Bridges
Secretary

0301#016

RULE

**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, has amended the LAC 67:III, Subpart 12, the Child Care Assistance Program.

To provide for the eligibility of more applicants, the agency expanded 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.

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 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), amended LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003).

§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.

I. - 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 29:43 (January 2003).

§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 29:43 (January 2003).

Gwendolyn P. Hamilton
Secretary

0301#039

RULE

**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, has adopted LAC 67:III, Subpart 15, Chapter 55, §5559 Early Childhood Supports and Services, as a TANF Initiative and has amended §5507, Adult Education, Basic Skills Training, Jobs Skills Training and Retention Services Program.

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 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 29:44 (January 2003).

§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 29:44 (January 2003).

Gwendolyn P. Hamilton
Secretary

0301#038

RULE

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

TANF Initiatives 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, adopted LAC 67:III, Subpart 15, Chapter 55, §5555 as part of the TANF Initiatives and amended §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.

Additionally, the agency amended §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 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

c. 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.

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 29:45 (January 2003).

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 29:45 (January 2003).

Gwendolyn P. Hamilton
Secretary

0301#040

RULE

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) has amended §101, Agency Profile and §103, Enabling Legislation, §107 Applicant/Client Appeal Right, and §115, Financial of its Vocational Rehabilitation Policy Manual. In §101, Agency Profile and §103, Enabling Legislation, the agency removed the reference to the Blind Register from policy, as it is not mandated. In §107 Applicant/Client Appeal Rights, the agency extended 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 §115, Financial, the agency amended guidelines to distinguish between trial work and extended evaluation; clarified that personal assistance services are not based on economic need; and removed 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 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), repromulgated LR 21:189 (February 1995), amended LR 21:473 (May 1995), LR 21:837 (August 1995), LR 25:1263 (July 1999), LR 29:46 (January 2003).

§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 29:46 (January 2003).

§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), repromulgated LR 21:189 (February 1995), amended LR 24:958 (May 1998), LR 25:1266 (July 1999), LR 26:1634 (August 2000), LR 29:46 (January 2003).

§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.vi. ...

vii. supported employment;

viii. on-site training; and

ix. on-the-job training;

x. assistive technology devices and services;

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. - b.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. through 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 24:959 (May 1998), LR 25:1273 (July 1999), LR 27:212 (February 2001), LR 27:1561 (September 2001), LR 29:47 (January 2003).

Gwendolyn Hamilton
Secretary

0301#037

RULE

**Department of Transportation and Development
Office of the Secretary**

Existing Significant Trees within the Highway
Right-of-Way, Zone of Construction
or Operational Influence (LAC 70:I.317)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., the Department of Transportation and Development has amended Section 317 of Chapter 3 of Title 70 entitled "General Policy Governing Treatment of Existing Significant Trees within the Highway Right-of-Way, Zone of Construction or Operational Influence," in accordance with R.S. 47:820.6.

**Title 70
TRANSPORTATION**

Part I. Highway Construction

Chapter 3. Roadside Vegetation Management

§317. General Policy Governing the Treatment of Existing Significant Trees within the Highway Right-of-Way, Zone of Construction or Operational Influence

A. Purpose. The purpose of this directive is to establish a general policy governing the treatment of significant trees by the Department within the highway right-of-way, zone of construction or operational influence.

B. Definitions

Historic Tree Ca tree that stands at a place where an event of historic significance occurred that had local, regional, or national importance. A tree may also be considered historic if it has assumed a legendary stature in the community; is mentioned in literature or documents of historic value; is considered unusual due to size or age; or has landmark status.

Significant Tree Cone of the following: Live Oak, Red Oak, White Oak, Magnolia, or Cypress that is considered aesthetically important, is 18" or greater in diameter at breast height (4' - 6" above the ground), and has a form that separates it from the surrounding vegetation or is considered historic. Significant trees must be in good health and not in a declining condition.

C. Design Considerations. The Landscape Architectural Staff and District Roadside Development Coordinators shall be consulted during the scoping and/or environmental phase. The Landscape Architectural staff shall identify significant trees during the scoping and/or environmental phase. The Design Section shall indicate significant trees on the plans and implement a context sensitive design (i.e., preservation, specified limited impact, or special treatment) to accommodate these trees where practical.

D. Construction Considerations. The Project Engineer shall ensure that the contractor's operations are sensitive to the treatment indicated in the plans.

1. Construction considerations may include the following:

- a. temporary fencing to protect trees from construction equipment;
- b. avoidance of root zones;
- c. care of overhanging branches, etc.

2. Significant tree issues arising on construction projects shall be managed by the District Roadside Development Coordinators, who shall seek the guidance of the Landscape Architectural staff when questions arise.

E. Considerations for Utility Companies. Utility operators shall not prune trees identified as significant by the Department. Alternate construction methods, such as changing the alignment, will be required to avoid impacting the significant tree(s). Removal of significant trees may be necessary when electrical utility lines cannot be aligned to avoid removal. Consideration will be given to boring to place utilities under significant Live Oaks or trees of historical significance where all other means of avoiding the trees have failed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:267 - 268 and R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR. 18:204 (February 1991), amended LR. 26:1675 (August 2000), LR 29:48 (January 2003).

Kam K. Movassaghi, Ph.D., P.E.
Secretary

0301#045

RULE

**Department of Wildlife and Fisheries
Office of Fisheries**

Experimental Fisheries Program Permits
(LAC 76:VII.701)

The secretary of the Department of Wildlife and Fisheries has amended the Rule which provides for the harvest of underutilized species under the experimental fisheries program and the issuance of permits.

Title 76
WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 7. Experimental Fisheries Program

§701. Permits

A. - B.10. ...

11. When a permit is issued, only the permitted specie(s) can be retained unless other provisions are specifically stated in the permit. All other species shall be immediately returned to waters from which they were caught. No other fish may be in the possession of the permittee and all fish on board the permitted vessel shall have the head and caudal fin (tail) intact.

12. ...

13. When permitted gear is on board permitted vessel or in possession of permittee, permittee and vessel are assumed to be operating under conditions of the permit. No gear other than permitted gear may be on board or in possession of permittee unless specifically provided for in the permit.

B.14. - D.1. ...

2. Permit applications for the development of new gear shall include complete descriptions of the gear and methods used, including drawings or pictures, the specie(s), or group of fishes to be fished and the area to be fished.

3. - 6. ...

7. If any permittee does not report monthly as required by Paragraph B.9, his permit may be suspended and the permittee may lose all rights and privileges to participate in the program in future years.

8. The Harvest of Shad (*Dorosoma sp.*) and Skipjack (*Alosa chrysochloris*) with an Experimental Seine

a. Closed Seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental seine permit shall be closed during the months of July, August, September and October of each year. Shad and skipjack may not be taken commercially with an experimental seine at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental seine under the provisions of this section shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental seine during the period after sunset and before sunrise.

iii. Experimental seines shall not be used in areas closed to seining.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental seine is a seine with a mesh size not less than 1" bar and 2" stretched and not more than 2" bar and 4" stretched, not exceeding 1,200 feet in length. The experimental seine may not be constructed of monofilament.

iii. Only "strike" fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the seine then placed around the selected school.

iv. The use of more than one experimental seine from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental seine at one time.

vi. Experimental seines shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Experimental seines shall not be left unattended as defined in R.S. 56 and shall be actively fished at all times by the permittee.

viii. Each experimental seine shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in the freshwater areas of the state.

x. All provisions of R.S. 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

c. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of shad and skipjack by properly licensed and permitted fishermen.

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one experimental seine permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56.

v. The permitted gear must be properly licensed as a fish seine.

e. General Provisions. Effective with the closure of the season for using the experimental seine permit for shad and skipjack, the possession of the experimental seine on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

9. Shad (*Dorosoma sp.*) and Skipjack (*Alosa chrysochloris*) Gill Net Permit (Lake Des Allemands Only)

a. Closed Seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental gill net permit shall be closed during the months of July, August, September and October of each year. Shad and skipjack may not be taken commercially with an experimental gill net at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental gill net under the provisions of this Section

shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental gill net during the period after sunset and before sunrise.

iii. Experimental gill net shall not be used in areas closed to gill netting.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental gill net is a gill net with a mesh size not less than 1" bar and 2" stretched and not more than 2" bar and 4" stretched, not exceeding 1,200 feet in length.

iii. Only "strike" gill net fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the gill net then placed in or directly near the selected school. Once deployed, the experimental gill net is to remain stationary until being run (gill net remains in place while fish are removed) or gill net is retrieved (gill net remains in place until lifted into boat).

iv. The use of more than one experimental gill net from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental gill net at one time.

vi. Experimental gill net shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Experimental gill net shall not be left unattended as defined in R.S. 56.

viii. Each experimental gill net shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in Lac Des Allemands. Streams, bayous, canals and other connecting waterbodies are not included in this permit.

x. All provisions of R.S. 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

c. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of shad and skipjack by properly licensed and permitted fishermen.

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one gill net permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56.

v. The permitted gear must be properly licensed as a freshwater gill net.

e. General Provisions. Effective with the closure of the season for using the experimental gill net permit for shad and skipjack, the possession of the experimental gill net on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

10. Experimental Freshwater River Shrimp (*Macrobrachium ohione*) Permit

a. May experimentally fish a wire mesh shrimp net, 1/4-inch bar, 6 feet in length in the Intercoastal Canal and Mississippi River within 1.5 miles of the boat ramp adjacent to the locks in Port Allen.

b. Only freshwater river shrimp may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permittee.

c. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

d. The permitted gear must be properly licensed as a Shrimp Trawl and may be fished in freshwater areas only.

e. Permitted gear must be marked using a 1 gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number should be legibly displayed on the jug.

f. This permit may be canceled at any time if in the judgment of the secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

g. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56.

11. Experimental Freshwater Minnow Dip Net Permit

a. May experimentally fish for bait fishes with a wire mesh dip net, 1/4-inch bar, no greater than 3 feet cylindrical open end net shaped in a cone, affixed to a handle that may be attached to a boat and is held by hand.

b. Only freshwater minnows may be taken; all threatened, endangered, specifically protected and game fish species (as defined in R.S. 56:327.A) shall be immediately returned to waters from which they were caught.

c. Permittee may only possess minnows taken under this permit and legal freshwater commercial species.

d. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

e. The permitted gear must be properly licensed as a commercial dip net and may be fished in freshwater areas only.

f. Permittee may only possess the permitted gear and set lines while fishing under the permit.

g. Permittee may possess or fish no more than 2 dip nets as described in Subparagraph a above on board a vessel under this permit.

h. Permitted gear handle must be painted with international orange paint.

i. This permit may be canceled at any time if in the judgement of the secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

j. Violating any provisions or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56:32.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:571.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), LR 12:847 (December 1986), amended by the Office of Fisheries, LR 15:1098 (December 1989), LR 29:49 (January 2003).

James H. Jenkins, Jr.
Secretary

0301#033

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Control of Wild Nuisance Quadrupeds (LAC 76:V.125)

Editor's Note: This Rule is being repromulgated for corrections. This Rule was promulgated in the December 2002 edition of the Louisiana Register and may be viewed on page 2570.

The Wildlife and Fisheries Commission has adopted Rules governing control of nuisance wild quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§125. Control of Nuisance Wild Quadrupeds

A. This Rule applies only to the control of the wild quadrupeds listed below and only when they are conclusively proven to be creating a nuisance or causing damage to property. The burden of establishing that the animal in question is causing the property damage shall rest with the property owner.

B. The following wild quadrupeds may be taken year-round without permit by the property owner or his designee, with written landowner permission, but only by trapping or shooting during legal daylight hours: coyote, armadillo, nutria, beaver, skunks, and opossums.

C. Squirrels, rabbits, foxes, bobcats, mink, otter, muskrat, raccoons and any of the other species listed above may be trapped alive and relocated to suitable habitat without permit provided the following conditions are met.

1. Written permission is obtained from the property owner where the animals are to be released and such written permission is carried in possession while transport and release activities are taking place.

2. Animals are treated in a responsible and humane manner and released within 12 hours of capture.

D. Traps shall be set in such a manner that provides the trapped animal protection from harassment from dogs and other animals and direct sun exposure.

E. Nuisance animals listed above may be so controlled by the property owner or his designee with written landowner permission, to prevent further damage.

F. Property owners must comply with all additional local laws and/or municipal ordinances governing the shooting or trapping of wildlife or discharge of firearms.

G. No animal taken under this provision or parts thereof shall be sold. A valid trapping license is required to sell or pelt nuisance furbearers during the open trapping season.

H. No species taken under the provisions of this rule shall be kept in possession for a period of time exceeding 12 hours.

I. This rule has no application to any species of bird as birds are the subject of other state and federal laws, rules and regulations.

J. Game animals, other than squirrels and rabbits, may only be taken by hunting during the open season under the conditions set forth under Title 56 of the Louisiana Revised Statutes and the rules and regulations of the Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, 56:6(10) and (15), R.S. 56:112, et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:2570 (December 2002), repromulgated LR 29:51 (January 2003).

Thomas M. Gattle, Jr.
Chairman

0301#008