

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Termite Bait and Baiting Systems (LAC 7:XXV.117 and 141)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission, proposes to amend regulations regarding minimum specifications for use of termite bait and baiting systems.

The Department of Agriculture and Forestry deems the implementation of these Rules and regulations necessary to provide for uniform minimum treatment specifications for baits and baiting systems. There are several different bait and baiting systems available for use by licensed pest control operators (PCO). These Rules insure that PCO install, monitor and treat structures for subterranean termites to at least a minimum set of requirements. These Rules also allow the department to regulate baits and baiting systems consistently and insure that the state's citizens are getting the services for which they are paying.

These Rules comply with and are enabled by R.S. 3:3203.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§117. Obligations of the Licensee

A. The licensee must keep the bond and general liability insurance required under §107.D in full force and effect at all times.

B. The licensee must renew the permit for operation for each business location annually prior to June 30.

C. The licensee must apply for a registration certificate for each employee under his supervision within 30 days after the employee is hired and must comply with all other requirements pertaining to registration of employees set forth in §113.

D. The licensee must follow label and labeling requirements in all applications of pesticides not specifically covered in §141.

E. The licensee shall be responsible for training the employee in the kind of work which he will perform.

F.1. The licensee must maintain his commercial applicator certification in current status by:

a. attending a continuing educational program for recertification approved by the Louisiana Department of Agriculture and Forestry;

b. recertification at least once every three years;

c. a minimum of six hours of technical training which shall include but not be limited to the categories of general pest control, termite control, wood destroying insect report (WDIR) inspector and commercial vertebrate control;

d. a minimum of six hours of technical training for the category of fumigation.

2. A licensee attending an approved recertification seminar must attend the entire approved program; otherwise the licensee shall not be recertified at this approved seminar.

3. Time and location for each licensee certification can be obtained by calling or writing to the Louisiana Department of Agriculture and Forestry.

4. A minimum of six hours of technical training for the category of fumigation.

5. A licensee attending an approved recertification seminar must attend the entire approved program, otherwise the licensee shall not be recertified at this approved seminar.

6. Time and location for each licensee certification can be obtained by writing to the Louisiana Department of Agriculture and Forestry.

G. The licensee must be available to provide direct supervision over all employees registered under his license on a regular, ongoing basis.

H. The licensee must report all termite contracts and all wood-destroying insect reports and pay all required fees as set forth in §119 hereof.

I. Any person applying pesticides for a fee and the licensee must maintain records, at the physical address listed on the place of business permit of all applications of pesticides for a period of two years after application on a record keeping form or in a format approved by the director of Pesticide and Environmental Programs of LDAF. The licensee must make a copy of these records available to any employee of the Louisiana Department of Agriculture and Forestry for inspection at a reasonable time during normal working hours.

1. Records for Licensee(s) applications of pesticides for wood destroying insects shall contain the following information:

- a. place of business name, address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;
- e. product\brand name;
- f. EPA registration number;
- g. restricted\general use pesticide;
- h. application date and time;
- i. target pest;
- j. type of application (pre-treat, post, spot);
- k. size of area treated (square feet or linear feet);
- l. mixture concentration;
- m. total amount of emulsion applied;
- n. applicator and certification number.

2. Record keeping for licensee(s) in the general pest and commercial vertebrate phases shall contain the following information:

- a. place of business name address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;

- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated/type of application;
- j. mixture concentration (percent);
- k. applicator and certification number.

3. Records for licensee(s) in the fumigation phase shall contain the following information:

- a. place of business name, address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated;
- j. type of application (ship, structure, commodity);
- k. size of area treated (cubic feet);
- l. rate applied;
- m. total amount of product applied;
- n. applicator, certification number.

4. Records for licensee(s) using Bait and Baiting Systems shall contain the following information:

- a. place of business name, address, and phone number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. physical address of contracted structure;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. linear feet of perimeter of the treated structure(s);
- i. date each monitoring stations installed or inspected;
- j. date each ground bait station installed, inspected or replaced;
- k. date each above ground bait station installed, inspected or replaced;
- l. number of monitoring, ground and above ground bait stations inspected during each inspection;
- m. name and certification\registration number of person inspecting;
- n. inspection diagram.

J. The licensee must renew each category in which he is licensed annually by June 30.

K. The annual fee for licensed pest control operators shall be \$5 for each category in which the pest control operator is licensed.

L. The licensee must report to the Louisiana Department of Agriculture and Forestry all termite contracts, termite perimeter applications and wood destroying insect reports completed each month on the form provided by the Louisiana Department of Agriculture and Forestry. The reports listed above are due in Division of Pesticides and Environmental Programs office in Baton Rouge on or before the tenth of the month following the contract or application.

M. The fee per termite contract and wood-destroying insect report is \$5 per and/or inspection report issued and is due on or before the tenth day of each month.

N. The licensee must have provisions for spill control including materials and tools on every vehicle transporting pesticides.

O. Signage of Vehicles

1. General. A motor vehicle being operated by a place of business that is engaged in the transport or application of pesticides must be marked as specified below:

- a. magnetic or removable signs may be used;
- b. size, shape, location and color of marking. The marking must contain the following:
 - i. appear on both sides of the vehicle;
 - ii. be in letters that contrast sharply in color with the background;
 - iii. be readily legible during daylight hours;
 - iv. lettering must be a minimum of two inches in height;
 - v. be kept and maintained in a manner that retains the legibility of the information required by §117.O.1.c;
- c. nature of marking. The marking must display the following information:
 - i. the name or trade name of the place of business operating the vehicle.

P. The only phone numbers that shall be used in any advertisement shall be the place of business permit phone number or the licensee's home phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:954 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 29:

§141. Minimum Specifications for Termite Control Work

A. - I. ...

J. Requirements for Baits and Baiting Systems

1. Any licensee or any person working under the supervision of a licensee, who applies baits and/or baiting systems, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system. Manufacturer certification and training programs shall have approval of the agenda prior to the program by the Louisiana Department of Agriculture and Forestry. Manufacturer shall notify LDAF in writing of the licensees and technicians certified.

2. All baits and baiting systems applications shall be contracted and reported according to R.S. 3:3370 and LAC 7:XXV.119.D and pay the fee as described in LAC 7:XXV.119.E.

3. Bait and baiting systems shall be used according to label and labeling.

4. Bait and baiting systems' ground monitoring stations shall be used to detect the presence of subterranean termites in the soil.

5. Ground bait delivery shall begin when the presence of subterranean termites are detected in the monitoring station or if the label allows. Ground bait stations may be used as monitoring stations and inspected as required in LAC 7:XXV.141.J.;

6. Above ground bait stations may be used according to their label and labeling when the presence of subterranean termites are detected in the contracted structure.

7. Ground monitoring and bait stations, used as monitors, shall be inspected monthly, not to exceed 35 days, from the date of installation or last inspection. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

8. When there is termite feeding on any bait and/or monitoring station(s) at the contracted structure; all above ground bait stations and ground monitoring and bait stations shall be inspected monthly, not to exceed 35 days from the date of installation or last inspection and such inspections shall continue until there is no termite feeding on any bait and/or monitoring station, in any station, at the contracted structure for 90 days from the date of installation or last inspection; When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

9. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitoring shall resume at regular intervals, not to exceed 90 days from the date of the last inspection; when termites are detected again, monitoring and/or baiting shall follow the requirements set forth in LAC 7:XXV.141.J.8.

10. Monitoring and ground bait stations shall surround the contracted structure and shall not be more than 20 feet apart, where soil is available unless the label requires stations closer and/or does not allow for "where soil is available."

11. Monitoring and ground bait stations, where soil is available, shall be no further than 20 feet from the slab or pier's outside perimeter except for non-structural wood elements including but not limited to trees, stumps, wood piles, landscape timbers and detached fences.

12. Records of contracts, graphs, monitoring, and bait applications shall be kept according to LAC 7:XXV.117.I.

13. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

14. All monitoring and bait stations shall be removed by the pest control operator from the contracted property within 30 days of the termination of the contract. In the event the bait and baiting system manufacturer stops the use by the pest control operator of their bait and baiting system; all monitoring and bait stations shall be removed by the pest control operator from the contracted property within 90 days of the stop use notification.

15. The commission hereby establishes a pilot program for the use of bait and baiting systems and shall include but not be limited to the following:

a. all baits and baiting systems products shall be subject to the pilot project for a period of a minimum of one year. The Structural Pest Control Commission shall reevaluate the products in the pilot program prior to the end of the first quarter of every calendar year;

b. pilot project bait and baiting system products shall, upon approval of the commission, be listed in the *Louisiana Register*;

c. pilot project bait and baiting system products are subject to all regulations in LAC 7:XXV.141.J;

d. baits and baiting systems may be used as a stand-alone termite treatment only with written approval by LDAF;

e. baits and baiting systems may be used as a supplement to traditional ground termiticide treatments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 29:

Family Impact Statement

The proposed amendments to LAC 7:XXV.117 and 141 regarding minimum specifications for use of termite bait and baiting systems should not have any known or foreseeable impact on any family as defined by R.S. 49:972 D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on the proposed Rules to Bobby Simoneaux, through April 25, 2003 at 5825 Florida Blvd., Baton Rouge, LA 70806. A public hearing will be held on these Rules on April 25, 2003 at 9 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing. No preamble regarding these Rules is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Termite Bait and Baiting

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

There is no anticipated implementation cost or savings to state or local governmental units. The Department of Agriculture and Forestry deems the implementation of these Rules and regulations necessary to provide for uniform minimum treatment specifications for baits and baiting systems. There are several different bait and baiting systems available for use by licensed pest control operators (PCO). These Rules insure that PCO install, monitor, and treat structures for subterranean termites to at least a minimum set of requirements.

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

There is no anticipated effect on revenue to state or local governmental units.

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

There is no anticipated significant cost to affected persons or non-governmental groups. Most of the PCO's are meeting these requirements. The benefits of these Rules will be to insure that pest control operators (PCO) install, monitor and treat structures for subterranean termites to at least a minimum set of requirements. These Rules also allow the Department to regulate baits and baiting systems consistently and insure that the state's citizens are getting the services for which they are paying.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Skip Rhorer
Assistant Commissioner
0303#079

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Economic Development
Office of Business Development
Business Resources Division**

Louisiana Small Business Linked Deposit Loan Program
(LAC 19:VII.7303 and 7305)

The Department of Economic Development, Office of Business Development, Business Resources Division, pursuant to the authority of R.S. 51:2312 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend §§7303 and 7305 of the Rules of the Louisiana Small Business Linked Deposit Loan Program. The purpose of the amended Rules is to provide for a floor interest rate to the state of 0.5 percent. Currently the program has no floor and in a low interest environment the state would not receive earnings on the deposits.

**Title 19
CORPORATIONS AND BUSINESS**

**Part VII. Economic Development Corporation
Subpart 7. Louisiana Small Business Linked Deposit
Loan Program**

**Chapter 73. Procedures for Authorization and
Administration**

§7303. General Provisions

A. The Linked Deposit Program is funded to meet all current and anticipated application needs. The extreme changes in the interest rate environment in recent years have, on occasion, presented the Treasury with a dilemma. Interest earnings on Treasury deposits supporting the Linked Deposit Program have been so low that the rate buy down prescribed below would force the Treasury to accept zero or negative earnings on its money. To preclude such events, a floor of 0.5 percent (0.005) is set as the lowest interest earnings accepted for Treasury funds on deposit under the Linked Deposit Program, as determined by the State Treasury. The buy down described, to the extent that it does not violate this floor, will be awarded on approval of an application.

B. Priority for application approval and funding shall be given as follows:

1. an eligible Louisiana business located in a very high unemployment area which creates one or more jobs shall receive a maximum of a four percent interest rate buy down;

2. an eligible Louisiana business located in a high employment area which creates three or more jobs shall receive a three percent interest rate buy down (less than three jobs shall receive two percent);

3. an eligible Louisiana certified disadvantaged business, disabled owned business, or research recipient of a Small Business Innovative Research Grant, which creates one or more jobs shall receive a maximum of a three percent interest rate buy down;

4. an eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a two percent interest rate buy down;

5. an eligible Louisiana business in a low unemployment area creating one to four jobs shall receive a maximum of a one percent interest rate buy down.

C. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent of the total available for linked deposits, unless otherwise specified by the treasurer.

D. Applications which provide a "but for" statement shall be eligible for a five year term on the linked deposit. All other applications are eligible for two year terms only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

**§7305. Linked Deposit Loan Program Authorization
Lending Institution Requirements; Applicants
Requirements and Conditions for Approval**

A. - K. ...

L. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year, coinciding with the annual maturity of the linked Treasury funds, and shall be the allowed percentage below the current competitive borrowing rate applicable to each eligible small business. At each annual maturity, the lender shall adjust the loan rate for the next year to the then competitive rate for that business, considering the usual concerns for loan payment performance and overall risk. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with this Section in the form and manner prescribed by the Treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

M. ...

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

Family Impact Statement

The proposed amendments to Rules 19:VII. Chapter 73 regarding the Louisiana Small Business Linked Deposit Loan Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on the proposed Rules to Daryl Manning through the close of business on April 21, 2003, at Post Office Box 94185, Baton Rouge, LA 70804-9185, 1051 North Third Street, Baton Rouge, Louisiana 70802. or by email to manning@lded.state.la.us.

Don J. Hutchinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Louisiana Small Business Linked Deposit Loan Program

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no anticipated costs or savings to the state or local governmental units associated with these changes to the Rules, other than those one-time costs directly associated with the publication of these Rules. These changes will not increase the workload for agency personnel.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections of state or local governmental units associated with this proposed Rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This action will lift the moratorium on the program and will benefit businesses borrowing funds through commercial loans resulting in job creation
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competing businesses. The program requires an increase in employment to be eligible.

Mike Williams
Resource Services Director
0303#084

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Economic Development Office of Business Development Business Resources Division

Workforce Development and Training Program
(LAC 13:III.Chapter 3)

The Department of Economic Development, Office of Business Development, Business Resources Division, Louisiana Economic Development Corporation, pursuant to the authority of R.S. 51:2312 and R.S. 51:2331 and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to amend the Rules for the Workforce Development and Training Program. The Rules are being amended to recognize the state's commitment to Cluster Based Economic Development; to recognize statutory changes made by Acts 2001, No.9; to eliminate the use of Sponsoring Entities in the Workforce Program; to provide that LEDC may cancel funding if the project takes more than a year to get started; to require a business plan, with financial statements and projections, with the application; to provide that the benefit to the state should not take longer than two years to be realized; to eliminate the limit of \$500,000 for a single grant; and to provide for other administrative changes.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 3. Workforce Development and Training Program

§301. Preamble and Purpose

A. Workforce Development and Training is vital to support the state's commitment to Cluster Based Economic Development, and the state's long-term goals as set forth in Louisiana: Vision 2020, which is the master plan for economic development for the state of Louisiana.

B. The purpose of the program is to enable the development of and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

1. improving the competitiveness and productivity of Louisiana's workforce and business community; and
2. assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§303. Definitions

ApplicantCthe entity or company requesting a training award from LED and LEDC under this program.

AwardCfunding approved under this program for eligible training activities.

Company the business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

Contract a legally enforceable award agreement between DED, the awardee and a sponsoring entity LEDC and the successful applicant-company governing the terms and the conditions of the training award.

Full Time Permanent Job an employed position requiring the employee to work a full 40-hour work week, and which is not a temporary position.

LEDC the Louisiana Department of Economic Development.

LEDC the Louisiana Economic Development Corporation.

Net Benefit Return to the State the determination of whether or not the value to the state is equal to or exceeds the amount of the award to the company.

Percentage of Achieved Performance Objectives as Provided in the Contract an average of that portion achieved by the company of the full time permanent jobs created or upgraded, and that portion achieved by the company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

Preference the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

Program the Workforce Development and Training Program.

Project the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to maintain or expand its Louisiana operations, to increase its capital investment in Louisiana, or to locate a facility in this state.

Secretary the secretary of the Louisiana Department of Economic Development, who is, by law, also the president of the Louisiana Economic Development Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§305. General Principles

A. The following general principles will direct the administration of the Workforce Development and Training Program:

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;

2. training awards are not to be construed as an entitlement for companies located or locating in Louisiana;

3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;

4. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;

5. evaluations for the enhancement of existing Louisiana businesses that are adding locations within the state will be conducted with the same procedures and with the same priority as the recruitment of new businesses to the state;

6. the anticipated economic benefits to the state will be considered as a requirement in making the award;

7. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate;

8. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers; and

9. award funds shall be utilized for the approved training project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§307. Program Descriptions

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§309. Eligibility

A. An eligible applicant is an employer that seeks customized training services to provide training in a particular industry.

B. The following types of businesses are ineligible for the award of workforce development funds: Retail Businesses; Trucking Companies; Lodging or Hospitality Enterprises; Assisted Living Enterprises, Retirement Communities, or Nursing Homes; and Gaming or Gambling Enterprises.

C. Employees to be trained must be employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained for projects at Stennis Space Center must be Louisiana residents.

D. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with the Department of Economic Development or LEDC in which the company is in default and/or is not in compliance.

E. Companies must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§311. Criteria

A. General (these apply to all training programs administered under these Rules)

1. Preference may be given to applicants in industries identified by the state as targeted or cluster industries, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 365 days of application approval, the LEDC, upon the recommendation of the secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the contract.

B. Pre-employment, Upgrade and On-the-Job Training

1. Applicants must create at least 10 net new full-time permanent jobs in the state, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 full-time permanent employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§313. Application Procedure

A. LED will provide a standard application form which applicants will use to apply for assistance. The application

form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information LED or LEDC may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§315. Submission and Review Procedure

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed, in order to:

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;

2. identify the availability of existing training programs which could be adapted to meet the employer's needs;

3. verify that the business will continue to operate during the period of the contract; and

4. determine if the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The net benefit return to the state shall not exceed two years.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to LEDC; and LEDC will then review and either approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§317. General Award Provisions

A. Award Agreement

1. An award agreement or contract will be executed between LEDC and the successful applicant-company. The contract will specify the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation, and the achievement of employee salary levels to be reached by the company.

2. LEDC will disburse funds to the company as provided by the award agreement or contract.

3. LED will oversee the progress of the training and reimburse the company on the basis of cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting information.

4. Funds may be used for training programs extending up to two years in duration.

5. Contracts issued under previous Rules may be amended to reflect current regulations as of the date of the most recent change, upon request of the company, the recommendation of LED, and approval of LEDC.

B. Funding

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. travel costs: travel for trainers, training coordinators and trainees;

c. materials and supplies costs: training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and computer based training (CBT) software; and

d. other costs: when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-computer based training (CBT) software, unless owned by a public training provider;

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

d. employee handbooks;

e. scrap produced during training;

f. food, refreshments; and

g. awards.

4. Training activities eligible for funding consist of:

a. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

b. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to LED by the company. Funds will not be available for reimbursement until a training agreement or contract between the company and LEDC has been executed. Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, reimbursements can be provided to the company only after final execution of a contract with LEDC.

2. Companies will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, companies shall be required to complete and submit to LED cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly Louisiana Department of Labor ES-4 Form filings to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company fails to meet its performance objectives specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the company in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED and on the recommendation of the secretary. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits of the training project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

4. In the event a company knowingly files a false statement in its application or in a progress report, the company may be guilty of the offense of filing false public

records, and may be subject to the penalty provided for in R.S. 14:133.

5. LEDC shall retain the right, for itself, for the Legislative Auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§319. Contract Monitoring

A. All monitoring will be done by LED. A portion of the fiscal year's appropriation, up to five percent or a maximum of \$200,000, may be used by LED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:244 (February 1999), LR 25:1665 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

§321. Conflicts of Interest

A. No member of Louisiana Economic Development Corporation (LEDC), employee thereof, or employee of the Louisiana Department of Economic Development (LED), nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

Family Impact Statement

The proposed amendments to Rules 13:III. Chapter 3 regarding the Workforce Development and Training Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;

6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons should submit written comments on the proposed Rule amendments to Daryl Manning through the close of business on April 21, 2003, at P. O. Box 94185, Baton Rouge, LA 70804-9185, by physical delivery to 1051 North Third Street, Baton Rouge, Louisiana 70802, or by email to manning@lded.state.la.us.

Don J. Hutchinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Workforce Development and Training Program

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

There are no anticipated costs or savings to the state or local governmental units associated with these changes to the Rules, other than those one-time costs directly associated with the publication of these Rules. These changes will not increase the workload for agency personnel.

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

There is no estimated effect on revenue collections of state or local governmental units associated with this proposed Rule.

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

This action may benefit businesses by removing the \$500,000 limit and the requirement that a sponsoring entity must be a part of the contract.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed Rule changes.

Mike Williams
Resource Services Director
0303#085

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School
Administrators CBESE Test Security Policy
and Louisiana Educational Assessment
Program Erasure Analysis Procedures
(LAC 28:1.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 741, Louisiana Handbook for School Administrators, referenced in LAC 28:1.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The BESE Test Security Policy was changed to clarify procedures for security of electronic test data and procedures for erasure analysis. Test scores from the Louisiana Educational Assessment Program are included in school and district accountability. Student level data is now available to

districts and schools electronically through the LDE website. The security of this data is critical. The erasure analysis procedures identify tests that have excessive wrong-to-right erasures indicating a testing irregularity.

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 28:269-271 (February 2002); LR 28:272-273 (February 2002); LR 28:991, 993 (May 2002); LR 28:1187 (June 2002), LR 29:

Board of Elementary and Secondary Education

Test Security Policy

The Board of Elementary and Secondary Education holds the test security policy to be of utmost importance and deems any violation of test security to be serious.

Test Security

1. Tests administered by or through the State Board of Elementary and Secondary Education shall include, but not be limited to:

a. all criterion-referenced tests (CRTs) and norm-referenced tests (NRTs);

b. all alternate assessments.

2. For purposes of this policy, school districts shall include local education agencies; Special School Districts; approved special schools such as the Louisiana School for the Visually Impaired and Louisiana School for the Deaf, laboratory schools, charter schools, Louisiana School for Math, Science and the Arts; and participating nonpublic/other schools that utilize tests administered through the State Board of Elementary and Secondary Education or the Louisiana Department of Education.

3. It shall be a violation of test security for any person to do any of the following:

a. administer tests in a manner that is inconsistent with the administrative instructions provided by the Louisiana Department of Education (LDE) that would give examinees an unfair advantage or disadvantage;

b. give examinees access to test questions prior to testing;

c. examine any test item at any time (except for students during the test or test administrators while providing the accommodations "Tests Read Aloud" or "Communication Assistance" for students determined to be eligible for those accommodations);

d. copy, reproduce, discuss or use at any time in a manner inconsistent with test regulations all or part of any secure test booklet, answer document, or supplementary secure materials (e.g., writing prompts, science tasks);

e. coach examinees in any manner during testing or alter or interfere with examinees' responses in any manner;

f. provide answers to students in any manner during the test, including provision of cues, clues, hints, and/or actual answers in any form—written, printed, verbal, or nonverbal;

g. administer published parallel, previously administered, or current forms of any statewide assessment [e.g., Louisiana Educational Assessment Program for the 21st Century (LEAP 21), Graduation Exit Examination for the 21st Century (GEE 21), Graduation Exit Examination ("old" GEE), LEAP Alternate Assessment (LAA), or Forms K, L, M, and all new forms of The Iowa Tests] as a practice test or study guide;

h. fail to follow security regulations for distribution and return of secure test booklets, answer documents, supplementary secure materials (e.g., writing prompts, science tasks), as well as overages as directed; or fail to account for and secure test materials before, during, or after testing;

i. conduct testing in environments that differ from the usual classroom environment without prior written permission from the Louisiana Department of Education, Division of Student Standards and Assessments;

j. fail to report any testing irregularities to the District Test Coordinator (a "testing irregularity" is any incident in test handling or administration that leads to a question regarding the security of the test or the accuracy of the test data), who must report such incidents to the Division of Student Standards and Assessments;

k. participate in, direct, aid, counsel, assist in, encourage, or fail to report any of the acts prohibited in the section.

4. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the State's test security policy. A "Statement of Assurance" regarding the LEA's test security policy must be submitted annually to the Louisiana Department of Education, Division of Student Standards and Assessments. This statement must include the name of the individual designated by the district superintendent or institution to procure test material. The policy shall provide:

a. for the security of the test materials during testing, including test booklets, answer documents, supplementary secure materials (e.g., writing prompts, science tasks), video tapes, and completed observation sheets;

b. for the storage of all tests materials, except district and school test coordinator manuals and test administration manuals, in a predetermined, secure, locked area before, during, and after testing; all secure materials, including any parallel forms of a test, must be kept in locked storage at both the district and school levels; secure materials must never be left in open areas or unattended;

c. a description and record of professional development on test security, test administration, and security procedures for individual student test data provided for all individuals with access to test materials or individual student test data ("access" to test materials by school personnel means any contact with or handling the materials but does not include reviewing tests or analyzing test items, which are prohibited);

d. a list of personnel authorized to have access to the locked, secure storage area;

e. procedures for investigating any testing irregularities, including violations in test security, such as plagiarism and excessive wrong-to-right erasures identified through erasure analysis;

f. procedures for the investigation of employees accused of irregularities or improprieties in the administration of standardized tests, as required by the amended R.S. 17:81.6;

g. procedures for the investigation of any missing test booklets, answer documents, or supplementary secure material (e.g., writing projects, science tasks);

h. procedures for ensuring the security of individual student test data in electronic and paper formats.

5. Procedures for investigating missing secure materials, any testing irregularity (including cheating), and any employees accused of improprieties must, at a minimum, include the following.

a. The district test coordinator shall initiate the investigation upon the district's determination of an irregularity or breach of security or upon notification by the State Department of Education. The investigation shall be conducted by the district test coordinator and other central office staff as designated by the district superintendent.

b. The location of the predetermined, locked, secure area for storage of materials shall be examined, and the individuals with access to secure materials shall be identified.

c. Interviews regarding testing administration and security procedures shall be conducted with the principal, school test coordinator(s), test administrator(s), and proctor(s) at the identified schools. All individuals who had access to the test materials at any time must be interviewed.

d. Interviews shall be conducted with students in the identified classes regarding testing procedures, layout of the classroom, access to test materials before the test, and access to unauthorized materials during testing.

e. After completion of the investigation, the district shall provide a report of the investigation and a written plan of action to the state superintendent within 30 calendar days of the initiation of the investigation. At a minimum, the report shall include the nature of the situation, the time and place of occurrence, and the names of the persons involved in or witness to the occurrence. Officials from the Louisiana Department of Education are authorized to conduct additional investigations.

6. Test materials, including all test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) containing secure test questions, shall be kept secure and accounted for in accordance with the procedures specified in the test administration manuals and other communications provided by the Louisiana Department of Education. Secure test materials include test booklets, answer documents, and any supplementary secure materials (e.g., writing prompts, science tasks). Procedures described in the test manuals shall include, but are not limited to, the following:

a. All test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) must be kept in a predetermined, secure, locked storage area prior to and after administration of any

test; test administrators are to be given access to the tests and any supplementary secure materials only on the day the test is to be administered, and these are to be retrieved immediately after testing is completed for the day and stored in a locked, secure location each day of testing.

b. All test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) must be accounted for and written documentation kept by test administrators and proctors for each point at which test materials are distributed and returned.

c. Any discrepancies noted in the serial numbers of test booklets, answer documents, and any supplementary secure materials (e.g., writing prompts, science tasks), or the quantity received from contractors must be reported to the Division of Student Standards and Assessments (LDE) by the designated institutional or school district personnel prior to the administration of the test.

d. In the event that test booklets, answer documents, or supplementary secure materials (e.g., writing prompts, science tasks) are determined to be missing while in the possession of the institution or school district or in the event of any other testing irregularities or breaches of security, the designated institutional or school district personnel must immediately notify by telephone the Division of Student Standards and Assessments (LDE) and follow the detailed procedures for investigating and reporting specified in this policy.

7. Only personnel trained in test security and administration shall be allowed to have access to or administer any standardized tests.

8. Each district superintendent or institution must annually designate one individual in the district or institution as district test coordinator who is authorized to procure test materials that are utilized in testing programs administered by or through the State Board of Elementary and Secondary Education of the Louisiana Department of Education. The name of the individual designated must be provided in writing to the Division of Student Standards and Assessments (LDE) and included on the "Statement of Assurance."

9. Testing shall be conducted in class-sized groups. *Bulletin 741* (2.038.01-.02) states that K-3 classroom enrollment should be no more than 26 students, and in grades 4-12, no more than 33, except in certain activity types of classes in which the teaching approach and the material and equipment are appropriate for large groups. For grades K-8, the maximum class size for Health and Physical Education classes may be no more than 40. Class size for exceptional students is generally smaller (*Bulletin 741*, 2.038.05). Permission for testing in environments that differ from the usual classroom environment must be obtained in writing from the Louisiana Department of Education, Division of Standards and Assessments, at least 30 days prior to testing. If testing outside the usual classroom environment is approved by the Division of Student Standards and Assessments, the LEA must provide at least one proctor for every 30 students.

10. The State Superintendent of Education may disallow test results that may be achieved in a manner that is in violation of test security.

11. The Louisiana Department of Education shall establish procedures to identify:

- a. improbable achievement of test score gains in consecutive years;
- b. situations in which collaboration between or among individuals may occur during the testing process;
- c. a verification of the number of all test distributed and the number of tests returned;
- d. excessive wrong-to-right erasures for multiple-choice tests;
- e. any violation to written composition or open-ended responses that involves plagiarism;
- f. any other situation that may result in invalidation of test results.

12. In cases in which test results are not accepted because of a breach of test security or action by the Louisiana Department of Education, any programmatic, evaluative, or graduation criteria dependent upon the data shall be deemed not to have been met, but individuals will be allowed to retake the test at the next test administration.

13. Individuals shall adhere to all procedures specified in all manuals that govern mandated testing programs.

14. Any individual knowingly engages in any activity during testing that results in invalidation of scores derived from the Louisiana Educational Assessment Program for the 21st Century (LEAP 21), Graduation Exit Examination for the 21st Century (GEE 21), or Graduation Exit Examination ("old" GEE) shall forfeit the test results but will be allowed to retake the test at the next test administration.

15. Anyone known to be involved in the presentation of forged, counterfeit, or altered identification for the purposes of obtaining admission to a test administration site for any test administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education shall have breached test security. Any individual who knowingly causes or allows the presentation of forged, counterfeited, or altered identification for the purpose of obtaining admission to any test administration site must forfeit all test scores but will be allowed to retake the test at the next test administration.

16. School districts must ensure that individual student test data are protected from unauthorized access and disclosure. District Test Coordinators, principals, school test coordinators and other authorized users of the LEAP^{web} Reporting System and LEAP^{data} System must ensure the security of passwords, any disks or CDs with downloaded individual student test data, and student-level test data open on a computer screen. All users must sign a statement guaranteeing they will not share the password with unauthorized individuals and maintain the confidentiality of student data. A copy of the signed statement should be sent to the District Test Coordinator to be kept on file. Users who have access to these systems and leave their positions at a district or school site must not use or share the password. District Test Coordinators are responsible for providing training regarding the security and confidentiality of individual student test data (in paper and electronic format) and of aggregated data of fewer than ten students.

17. Louisiana Department of Education staff will conduct site visits during testing to observe test administration procedures and to ensure that appropriate test security procedures are being followed. Schools with prior

violations of test security or other testing irregularities will be identified for visits. Other schools will be randomly selected.

18. Any teachers or other school personnel who breach test security or allow breaches in test security shall be disciplined in accordance with the provisions of R.S. 17:416 et seq., R.S. 17:441 et seq., R.S. 17:81.6 et seq., policy and regulations adopted by the Board of Elementary and Secondary Education, and any and all laws that may be enacted by the Louisiana Legislature.

Louisiana Educational Assessment Program Erasure Analysis Procedures

In order to investigate erasures on student answer documents for the multiple-choice portions of the state criterion-referenced and norm-referenced testing programs, the State Board of Elementary and Secondary Education and the State Department of Education have developed the following procedures.

1. The scoring contractor will scan every answer document for wrong-to-right erasures, and the state average and standard deviation will be computed for each subject at each grade level.

2. Students whose wrong-to-right erasures exceed the state average by more than four standard deviations will be identified for further investigation. For each student with excessive erasures, the proportion of wrong-to-right erasures to the total number of erasures will be considered.

3. Based on the criteria for excessive wrong-to-right erasures, the scoring contractor will produce the following reports:

- District/School Erasure Analysis Report (three copies, sorted by district).
- *Student Erasure Analysis Report* for students identified as having excessive wrong-to-right erasures. This report contains student demographic information, an item-by-item analysis of wrong-to-right erasures, and a statement showing that the student exceeded the four-standard-deviation criterion.
- The scoring contractor will maintain answer documents for the students exceeding the four-standard-deviation criterion, sorted by district/school. The answer documents will be available for review upon request.

4. Upon receipt of the *Erasure Analysis Reports*, LDE staff will notify the State Superintendent of Education regarding which schools have been identified.

5. The correspondence from the State Superintendent of Education to the local superintendent will state that students have been identified as having excessive wrong-to-right erasures. Based on the number of erasures found, scores for students exceeding the four-standard-deviation criterion will be voided. The individual student reports from the testing program will reflect the voided scores. In the aggregation of scores at the school, district, and state levels, each voided score will have the effect of a zero score. Included with the correspondence will be the following documentation:

- District/School Erasure Analysis Report
- Student Erasure Analysis Reports

Copies of this correspondence will be provided to the Deputy Superintendent of Education, the Assistant

Superintendent of the Office of Student and School Performance, the Director of the Division of Student Standards and Assessments, and the local District Test Coordinator.

6. When the correspondence is mailed, the local superintendent will be advised to investigate the case of the irregularity and provide a written plan of action to the State Superintendent of Education within 30 calendar days.

7. A roster of schools will be generated where students have been identified with wrong-to-right erasures greater than three standard deviations above the state average, but less than or equal to four standard deviations above the state average of wrong-to-right erasures. These student scores will not be voided; however, the local superintendent will be advised to investigate the case of the irregularity and provide a written plan of action to the State Superintendent of Education within 30 calendar days.

8. A summary report of erasure analysis irregularities will be presented to the Louisiana Educational Assessment Testing Commission and the Board of Elementary and Secondary Education after each LEAP test administration.

* * *

Family Impact Statement

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

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

Interested persons may submit comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741C Louisiana Handbook for School Administrators** **BESE Test Security Policy and Louisiana Educational Assessment Program Erasure Analysis Procedures**

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

The only implementation costs are \$320 for publication in the Louisiana Register of the proposed BESE Test Security

Policy. This is an update of the BESE Test Security Policy approved in August 2001. There will not be an increase or reduction in workload or additional paperwork. The BESE Test Security Policy will be available on the LDE website.

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

There is no estimated effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
0303#034

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel
C Fee Policy for Out-of-Field Authorization to Teach License
(LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:1.903.A. This policy specifies origin of fee payment for the Out-of-Field Authorization to Teach license. The fee for this license is to be paid by the requesting school district, not by the individual teacher in whose name the license is issued.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 28:763-765 (April 2002); LR 28:765 (April 2002); LR 28:990, 991 (May 2002); LR 29:

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Types of Teaching Authorizations and Certifications Effective July 2002, revised December 2002

Non-Standard Temporary Authorizations to Teach			
<p>Temporary Authority to Teach</p> <p>(A teacher may hold a one-year Temporary Authorization to Teach for a maximum of three years while pursuing a specific certification area. He/she may not be issued another Temporary Certificate at the end of the three years for the same certification unless the Louisiana Department of Education designates the certification area as one that requires extensive hours for completion.)</p>	<p>Districts may recommend that teachers be given one-year temporary authorizations to teach according to the stipulated conditions. Districts must provide a signed affidavit by the local superintendent that "there is no regularly certified, competent, and suitable person available for that position" and that the applicant is the best qualified person for the position.</p>	Conditions	Requirements to Renew Temporary Authorization to Teach and/or Move To Another Certification Level
		a. Individual who graduates from teacher preparation program but does not pass PRAXIS	Teacher must prepare for the PRAXIS and take the necessary examinations at least twice a year.
		b. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who applies for admission to a Practitioner Teacher Program or other alternate program but does not pass the PPST or the content specialty examination of the PRAXIS required for admission to the program.	Teacher must successfully complete a minimum of six credit hours per year in the subject area(s) that they are attempting to pass on the PRAXIS; candidate must reapply for admission to a Practitioner Teacher Program or other alternate program.
		c. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who is hired after the start of the Practitioner Teacher Program	Teacher must apply for admission to a Practitioner Teacher Program or other alternate program and pass the appropriate PRAXIS examinations required for admission to the program.
<p>Practitioner Teacher License</p> <p>One-year license that can be held a maximum of three years, renewable annually.</p>	<p>The District and the alternate certification program provider must identify the individual as a practitioner teacher (PL1), a non-master's alternate certification program teacher (PL2), or a master's alternate certification program teacher (PL3).</p>	<p>Teacher must be admitted to and enrolled in a State-approved Practitioner Teacher Program (PL1), Non-Master's Alternate Certification Program (PL2), or Master's Degree Alternate Certification Program (PL3), which necessitates meeting all program requirements including baccalaureate degree, stipulated GPA, and passing scores on the Praxis PPST and content area exams.</p>	<p>The alternate certification teacher (PL1, PL2, and PL3) must remain enrolled in the respective program and fulfill all coursework, teaching assignments, and prescribed activities as identified by the program provider. Program requirements must be completed within the three-year maximum that the license can be held.</p> <p>PL2 and PL3 teachers must demonstrate progress toward program requirements by successfully completing at least 9 semester hours each year to remain on the PL license.</p>
<p>Out-of-Field Authorization to Teach</p> <p>(A teacher may hold a one-year Out-of-Field Authorization to Teach, renewable annually, for a maximum of three years.</p> <p>If the teacher is actively pursuing certification in the field and LDE designates the certification area as one requiring extensive hours for completion, two additional years of annual renewal may be granted.)</p>	<p>District submits application to LDE; renewable annually for maximum of three years, with fee to be paid by the district.</p> <p>Superintendent of employing district must provide a signed statement that certifies that "there is no regularly certified, competent and suitable person available for the position" and that the applicant is the best-qualified person available for the position.</p>	a. Individual holds a Louisiana teaching certificate, but is teaching outside of the certified area.	<p>Teacher must obtain a prescription/outline of course work required for add-on certification in the area of the teaching assignment. Teacher must successfully complete a minimum of six credit hours per year of courses that lead toward certification in the area in which he/she is teaching; or the secondary-certified teacher who is teaching out-of-field may opt to take and pass the required PRAXIS content specialty examination for the specific 7-12 academic certification area, if the area has been declared as a primary or secondary teaching focus area. The district must support a teacher's efforts in this area.</p>
<p>Temporary Employment Permit</p>	<p>Under condition (a) the district submits application to LDE; renewable annually.</p> <p>Under condition (b) the Individual submits application to LDE; renewable annually.</p>	a. Individual meets all certification requirements, with the exception of passing all portions of the NTE examination, but scores within ten percent of the composite score required for passage of all exams. (Currently classified as EP)	<p>Superintendent and President of the school board to which the individual has applied for employment must submit a signed affidavit to the LDE stipulating that there is no other applicant who has met all of the certification requirements available for employment for a specific teaching position. Such permit shall be in effect for not more than one year, but may be renewed. Such renewal of the permit shall be accomplished in the same manner as the granting of the original permit. The granting of such emergency teaching permit shall not waive the requirement that the person successfully complete the exam.</p> <p>While employed on an emergency teaching permit, employment period does not count toward tenure.</p>

		b. Individual meets all certification requirements, with the exception of passing one of the components of the PRAXIS, but has an aggregate score equal to or above the total required on all tests. (Currently classified as TEP)	Temporary Employment Permits are issued at the request of individuals. All application materials required for issuance of a regular certificate must be submitted to LDE with the application for issuance of a TEP. An individual can be re-issued a permit three times only if evidence is presented that the required test has been retaken within one year from the date the permit was last issued. Beginning with the fifth year, additional documentation must be submitted by the employing district.
Standard Teaching Certifications			
Out of State Certificate	Individual submits application to LDE; valid for three years, non-renewable.	a. A teacher certified in another state who meets all requirements for a Louisiana certificate, except for the PRAXIS examinations. -or- Teacher provides evidence of at least four years of successful teaching experience in another state, completes one year of employment as a teacher in Louisiana public school systems, and secures recommendation of the local superintendent of the employing school system for continued employment.	Teacher must take and pass the appropriate PRAXIS examinations -or- Teacher provides evidence of at least four years of successful teaching experience in another state, completes one year of employment as a teacher in Louisiana public school systems, and secures recommendation of the local superintendent of the employing school system for continued employment.
Professional Level Certificates (effective for all new certificates issued after July 1, 2002)			
Level 1 Professional Certificate (Three-year term)	Teachers must graduate from a State-approved teacher preparation program (traditional or alternative path), pass PRAXIS, and be recommended by a university to receive a Level 1 Professional Certificate. -or- Teacher must complete a State-approved Practitioner Teacher Program, pass PRAXIS, and be recommended by the Practitioner Teacher Program provider to receive a Level 1 Professional Certificate. -or- Teacher must meet the requirements of an out-of-state certified teacher.		A lapsed Level 1 certificate may be extended once for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of resident, extension, or correspondence credit directly related to the area of certification. However, if the holder of the Level 1 certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of 150 hours of professional development.
Level 2 Professional Certificate	Teachers with a Level 1 Professional Certificate must pass the Louisiana Assistance and Assessment Program and teach for three years to receive a Level 2 Professional Certificate.		Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 2 Professional License renewed.
Level 3 Professional Certificate	Teachers with a Level 1 or Level 2 Certificate are eligible for a Level 3 Certificate if they complete a Masters Degree, teach for five years, and pass the Louisiana Assistance and Assessment Program.		Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 3 Professional License renewed.
Standard Teaching Certificates (issued prior to July 1, 2002)			
Type C Certificate	Type C certificates will not be issued after July 1, 2002.		
Type B Certificate	Candidates currently holding Type A or Type B certificates will continue to hold these certificates, which are valid for life, provided the holder does not allow any period of five or more consecutive years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education, acting in accordance with law.		
Type A Certificate			
Process for Renewing Lapsed Professional Certificates			
Type C, B, and A Certificates			
<p>Type B and Type A certificates will lapse for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester (90 consecutive days). Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.</p> <p>A lapsed Type C certificate may be renewed for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of credit directly related to the area(s) of certification. Such credit hours shall be resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. However, if the holder of a Type C certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of the six semester hours of credit as described previously in the paragraph.</p>			
Level 2 and Level 3 Certificates			
<p>Level 2 and Level 3 professional certificates will lapse (a) for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester [90 consecutive days], or (b) if the holder fails to complete the required number of professional development hours during his employ. Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.</p>			

Family Impact Statement

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

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746C Louisiana Standards for
State Certification of School PersonnelC Fee Policy for
Out-of-Field Authorization to Teach License**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy specifies origin of fee payment for the Out-of-Field Authorization to Teach license.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This policy will have no effect on revenue collections. Regardless of the payer, the fee remains the same.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This policy provides payment by school district rather than by the individual teacher for an Out-of-Field Authorization to Teach license. Individual teachers in whose name this license is issued would save the cost of the license, \$25.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This policy will have no effect on competition and employment

Marlyn J. Langley
Deputy Superintendent
0303#032

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Grades 7-12 Certification Primary and Secondary Teaching Focus Areas (LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:1.903.A. This policy revises certification titles for secondary (7-12) primary and secondary teaching focus areas to reflect the update of vocational categories to career and technical categories. This policy also provides an option for a single primary focus of social studies in secondary teacher education undergraduate programs, using the full 50 hours allowed for both the primary and the secondary teaching focus area in other programs. The change of vocational education categories to career and technical categories necessitates a revision in the certification titles used in Louisiana. The single teaching focus for social studies undergraduate programs will allow for the full breadth of knowledge needed, with coursework to be distributed across civics/government, history (world, American, Louisiana), economics, and geography (physical and cultural systems).

**Title 28
EDUCATION**

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 28:763-765 (April 2002); LR 28:765 (April 2002); LR 28:990, 991 (May 2002); LR 29:

**Primary and Secondary Teaching (Focus) Areas
for Grades 7-12 Certification**

Within the new certification structure that has been approved by the State Board of Elementary and Secondary Education, every secondary teacher in Louisiana must have a primary and a secondary focus area. The following areas are approved primary focus areas, to include a minimum of 31 semester hours of credit:

Agriculture; Business; Computer Science; Marketing; English; French; Spanish; Latin; German; Family and Consumer Sciences; Technology Education; Mathematics; General Science; Biology; Chemistry; Earth Science; Physics; Environmental Science; Speech; and Social Studies.

The following areas are approved secondary focus areas, to include a minimum of 19 semester hours of credit:

Business; Computer Science; Marketing; English; French; Spanish; Latin; German; Journalism; Mathematics; Biology; Chemistry; Earth Science; Physics; Environmental Science; Speech; and Social Studies.

Primary and Secondary Teaching (Focus) Areas for Grades 7-12 Certification

Certification Area	Primary 31 Hours	Secondary 19 Hours	Comment
Agriculture	?		
Business	?	?	
Computer Science	?	?	
Marketing	?	?	
English	?	?	
Foreign Languages			
French	?	?	
Spanish	?	?	
Latin	?	?	
German	?	?	
Family & Consumer Sciences	?		
Technology Education	?		
Journalism		?	
Mathematics	?	?	
Science			If a candidate pursues General Science as a primary teaching area, then the specific science area hours (e.g., Biology, Chemistry, etc.) would also apply to the required secondary focus hours in that specific field.
General Science	?		
Biology	?	?	
Chemistry	?	?	
Earth Science	?	?	
Physics	?	?	
Environmental Science	?	?	
Speech	?	?	
Social Studies*	?	?	
<p>Note: If a university determines that hours beyond the required hours are needed for a specific primary (31) or secondary (19) teaching area, then the university may use portions of the flexible hours within the 124 total hours to address that need.</p> <p>*Institutions of higher education may opt to design social studies teacher preparation programs with only a primary teaching focus area, dedicating the entire 50 semester hours of content specialty preparation to coursework in civics/government, history (world, American, Louisiana), economics, and geography (physical and cultural systems).</p>			

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Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption,

repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746C Louisiana Standards for State Certification of School Personnel Grades 7-12 Certification Primary and Secondary Teaching Focus Areas

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
 The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy revises certification titles for secondary (7-12) primary and secondary teaching focus areas to reflect the update of vocational categories to career and technical categories. This policy also provides an option for a single primary focus of social studies in secondary teacher education undergraduate programs, using the full 50 hours allowed for both the primary and the secondary teaching focus area in other programs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 This policy will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
0303#031

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Non-Master's Certification-Only Alternate Program (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy revises the Non-Master's/Certification-Only Program description to include student teaching as an option to internship, to include program prescription as an option to individualized prescription, and to extend the implementation date for this program to Summer Semester 2003. This policy provides options to expand the possibilities for alternate certification candidates and for the providers who will offer approved programs. It also extends the implementation deadline for this program by one semester.

**Title 28
EDUCATION**

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

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:763-765 (April 2002), LR 28:765 (April 2002), LR 28:990-991 (May 2002), LR 29:

**Non-Masters/Certification-Only Program
Alternative Path to Certification**

Adopted December 2002

This program is designed to serve those candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program. The program may also be accessible in some areas of the state in which the other alternate certification programs are not available. A college or university may offer this program only in those certification areas in which that institution has a state-approved teacher education program. Non-Master's/ Certification-Only Programs may offer certification in PK-3, 1-6, 4-8, 7-12, or Mild-Moderate Special Education.

Admission to the Program

To be admitted, individuals should:

1. possess a baccalaureate degree from a regionally accredited university;
2. have a 2.2 GPA, or higher, on undergraduate coursework. (An overall 2.5 GPA is required for certification. Those candidates with a GPA lower than 2.5

may have to take additional courses in the program to achieve a 2.5 GPA.);

3. pass the PRAXIS Pre-Professional Skills Test (PPST); and

4. pass the PRAXIS content-specific subject area examination:

a. Candidates for PK-3 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty exam;

b. Candidates for Grades 1-6 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty exam;

c. Candidates for Grades 4-8 (regular and special education): pass the Middle School Education: Content Knowledge (#0146) specialty exam;

d. Candidates for Grades 7-12 (regular and special education): pass the content specialty examination(s) (e.g. English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.

Program Requirements

This program will provide the same rigor as other certification routes provided by aligning with such empirically-based standards as National Council for the Accreditation of Teacher Education (NCATE), Interstate New Teacher Assessment and Support Consortium (INTASC), Louisiana Components of Effective Teaching (LCET), and the Louisiana Content Standards. This program will also emphasize collaboration between the university and the school districts in order to share and exchange strategies, techniques, and methodologies; and integrate field-based experiences into the curriculum.

Program Structure

1. Knowledge of Learner and the Learning Environment* Grades PK-3, 1-6, 4-8, and 7-12:	12 hours
Child/adolescent development/psychology, the diverse learner, classroom management/organization/environment, assessment, instructional design, and reading/instructional strategies that are content- and level-appropriate.	
Mild/Moderate Special Education 1-12:	
Special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, vocational and transition services for students with disabilities.	
*All courses for regular and special education will integrate effective teaching components, content standards, technology, reading, and portfolio development. Field-based experiences will be embedded in each course.	
2. Methodology and Teaching	6 hours
Methods courses to include case studies and field experiences	
3. Internship or Student Teaching	6 hours
Will include methodology seminars that are participant-oriented	
4. Prescriptive Plan	
The prescriptive plan can be pre-planned courses for individual programs or individualized courses for the candidate who demonstrates areas of need, not to exceed 9 semester hours.	
Total	24-33 hours

Certification Requirements

Colleges or universities will submit signed statements to the Louisiana Department of Education that indicate the student completing the Non-Master's/Certification-Only alternative certification path met the following requirements.

1. Passed the PPST components of the PRAXIS. (Note: This test was required for admission.)
2. Completed all coursework (including the certification program) with an overall 2.5 or higher GPA.

3. Passed the specialty examination (PRAXIS) for the area(s) of certification.

a. Grades PK-3: Elementary Education: Content Knowledge specialty exam (Note: This test was required for admission.)

b. Grades 1-6: Elementary Education: Content Knowledge specialty examination (Note: This test was required for admission.)

c. Grades 4-8: Middle School Education: Content Knowledge specialty examination (Note: This test was required for admission.)

d. Grades 7-12: Specialty content test in areas to be certified. (Note: This test or 31 semester hours of coursework specific to the content area was required for admission.)

e. Mild/Moderate Special Education 1-12: *Special Education*

4. Passed the Principles of Learning and Teaching examination (PRAXIS)

a. Grades PK-3: Principles of Learning and Teaching K-6

b. Grades 1-6: Principles of Learning and Teaching K-6

c. Grades 4-8: Principles of Learning and Teaching 5-9

d. Grades 7-12: Principles of Learning and Teaching 7-12

Universities offering the Non-Master's/Certification-Only alternative certification option are required to begin implementation of the newly adopted paths during or before Summer 2003.

No students should be accepted into the "old" post-baccalaureate alternate certification program after Spring Semester 2003. Candidates already in the "old" alternative certification program would be given until August 2006 to complete their programs.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Family Impact Statement

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

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

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

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

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

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

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

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Non-Master's Certification-Only Alternate Program**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy revises the Non-Master's/Certification-Only Program description to include student teaching as an option to internship, to include program prescription as an option to individualized prescription, and to extend the implementation date for this program to Summer Semester 2003.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0303#030

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel
Policy for Allowing the State to Act as a Private Provider for Alternate Certification
(LAC 28:I:903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy sets conditions under which the Teacher Certification and Higher Education section of the Division of Teacher Standards, Assessment and Certification of the Louisiana Department of Education may act as a private provider for alternate certification of teacher education candidates. By providing options for individuals who meet the stated criteria, the state would provide timely solutions to problems that impede candidates' completion of alternate programs, thus facilitating the certification efforts of those candidates.

**Title 28
EDUCATION**

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

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:763, 765 (April 2002), LR 28:765 (April 2002), LR 28:990, 991 (May 2002), LR 29:

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**Policy for the State to Act as a Private Provider in
Offering Alternate Certification Opportunities**

The Teacher Certification and Higher Education section, Division of Teacher Standards, Assessment and Certification, Louisiana Department of Education, may act as a private alternate certification program provider in directing certification efforts of candidates who meet the following criteria:

1. have no more than six semester hours of coursework remaining in an approved alternate certification program;

2. have accumulated three years of successful experience in the area of certification, which can be used to waive the student teaching or internship segment of the program; and

3. have experienced difficulty in completing requirements of the alternate program, through no fault of their own.

Family Impact Statement

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of

Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Policy for Allowing the State to Act
as a Private Provider for Alternate Certification**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy sets conditions under which the Teacher Certification and Higher Education section of the Division of Teacher Standards, Assessment and Certification of the Louisiana Department of Education may act as a private provider for alternate certification of teacher education candidates. By providing options for individuals who meet the stated criteria, the state would provide timely solutions to problems that impede candidates' completion of alternate programs, thus facilitating the certification efforts of those candidates.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0303#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State
Certification of School PersonnelC Policy for
Teacher Education Program Private Providers
(LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. This policy specifies the three ways that a certified teacher can add a certification endorsement in a declared teaching focus area for Grades 4-8 and Grades 7-12. Add-on certification in academic areas

identified as a teaching focus in grades 4-8 or in grades 7-12 can be granted through either (1) earning a passing score on the identified Praxis content specialty area exam, or (2) successfully completing 31 semester hours in the specific academic area, or (3) earning a pure master's degree in a content area. Under the new certification structure, endorsements could be earned with 19 content hours, but this must be changed to reflect the 31 semester hours identified as an academic major by the Board of Regents.

**Title 28
EDUCATION**

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

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 28:763-765 (April 2002); LR 28:765 (April 2002); LR 28:990, 991 (May 2002); LR 29:

Add-On Certification Policy Academic Teaching Focus Areas Grades 4-8 And 7-12

A teacher must currently hold a standard teaching certificate in order to add an endorsement for a certification area.

Add-on certification in academic areas that have been identified as a teaching focus in grades 4-8 or in grades 7-12 can be granted through either (1) earning a passing score on the identified content specialty area exam of the PRAXIS, or (2) successfully completing 31 semester hours in the specific academic area, or (3) earning a pure Master's Degree in a content area.

Add-on certification in academic areas through the PRAXIS exams would be available only in those Grades 4-8 and Grades 7-12 academic certification areas for which a content specialty exam has been validated in Louisiana and for which a passing score has been established.

Primary and Secondary Teaching (Focus) Areas for Grades 7-12 Certification

Certification Area	Primary 31 Hours	Secondary 19 Hours	Comment
Agriculture - Vocational	?		
Business Education	?	?	
Computer Science	?	?	
Distributive Education	?	?	
English	?	?	
Foreign Languages			
French	?	?	
Spanish	?	?	
Latin	?	?	
German	?	?	
Family & Consumer Sciences	?		
Industrial Arts	?		
Journalism		?	
Mathematics	?	?	

Science			If a candidate pursues General Science as a primary teaching area, then the specific science area hours (e.g., Biology, Chemistry, etc.) would also apply to the required secondary focus hours in that specific field.
General Science	?		
Biology	?	?	
Chemistry	?	?	
Earth Science	?	?	
Physics	?	?	
Environmental Science	?	?	
Speech	?	?	
Social Studies	?	?	
Note: If a university determines that hours beyond the required hours are needed for a specific primary (31) or secondary (19) teaching area, then the university may use portions of the flexible hours within the 124 total hours to address that need.			

Family Impact Statement

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

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Policy for Teacher Education Program Private Providers**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy specifies the three ways that a certified teacher can add a certification endorsement in a declared teaching focus area for Grades 4-8 and Grades 7-12.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
0303#033

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel Policy for Teacher Education Program Private Providers (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy revises the "Part I, Application for Certificates, Louisiana Applicants" and "Part II, New Certification Structure, Recommended Changes" sections of Bulletin 746 to include non-institutional providers for the Practitioner Teacher Program and to include the State, acting as a private provider. This policy provides options for approved non-institutional, or private, providers to offer the Practitioner Teacher Program alternate route to certification. It also specifies that the state may act as a private provider under conditions approved by the Board of Elementary and Secondary Education.

Title 28 EDUCATION

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

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:763-765 (April 2002), LR 28:765 (April 2002), LR 28:990-991 (May 2002), LR 29:

* * *

Application for Certificates Louisiana Applicants

An applicant, in order to be eligible for initial certification, shall do his work in teacher education programs approved by the State Board of Elementary and Secondary Education for the education of teachers. Therefore, institutions* engaged in the preparation of teachers are to provide recommendations for certification of their students. Other institutional* provider services shall include the following:

1. initial processing of the certificate application;
2. processing an official transcript;
3. providing an original NTE/PRAXIS score report, if score has not been electronically transmitted to the State Department of Education by Educational Testing Service;
4. submitting a Professional Conduct Form; and
5. transmitting the application packet and official transcript to the Office of Teacher Certification and Higher Education in the State Department of Education.

The application shall include the following:

1. the signature of the dean of education, or the head of the unit that administers the approved teacher education curriculum, certifying that the applicant has graduated from or has completed an approved curriculum in teacher education. For an undergraduate secondary teacher education program, the application for certification must also bear the signature of the dean or head of the unit offering each of the certification area subjects in an institution of higher education;

2. the signature of the registrar certifying that the applicant has attained a scholastic standing that is acceptable for graduation from the institution. The transcript on which a certificate is based becomes the property of the state and must be kept in the files of the State Department of Education. No certificate for teaching in Louisiana may be issued to any person whose license has been revoked in any other state.

The issuance of regular certificates authorizing the holder to teach in the elementary and secondary schools of Louisiana is based upon the completion of an approved teacher education program for the type of certification sought. One expecting to be certified as a teacher should attend a college or university* with an approved program.

Colleges and universities* may recommend for certification only those who have completed all requirements of an approved teacher education program at the institution.

*For the Practitioner Teacher alternate teacher certification program only, private providers approved by the state may offer a program leading to the certification of teachers.

*The state may act as a private provider under conditions approved by the Board of Elementary and Secondary Education.

New Certification Structure Recommended Changes Mandatory July 2002

The universities* must recommend that teachers be issued Level 1 Teaching Certificates when they have met state certification requirements. The universities* will be held accountable for the success of the teachers that they recommend for certification.

This would eliminate the need for the Louisiana Department of Education to count hours on transcripts and

allow the department to become more involved in providing support to universities* to improve the quality of teacher preparation programs. (Note: The Louisiana Department of Education would still continue to review transcripts and issue certificates to out-of-state teachers.)

This change in the certification structure will allow teachers to develop more content knowledge in the grade levels in which they are expected to teach and provide them with more flexible hours to add special education and other grade levels to their certification areas. This would allow new teachers to be certified in one or two areas when completing a 124-credit-hour undergraduate degree program.

All new teachers will be required to receive mentoring during the first year of the Louisiana Teacher Assistance and Assessment Program. New teachers will undergo the assessment during the second year.

All teachers will be required to pass teacher assessment and teach for a total of three years before being issued a Level 2 teaching certificate.

All teachers holding Level 2 and Level 3 certificates will be required to undergo a predetermined amount of professional development during a five-year time period in order to have their teaching certificates renewed for five years. The Blue Ribbon Commission on Teacher Quality will develop the details for the professional development system during the 2000-2002 school years.

*For the Practitioner Teacher alternate teacher certification program only, private providers approved by the state may offer a program leading to the certification of teachers.

*The state may act as a private provider under conditions approved by the Board of Elementary and Secondary Education.

* * *

Family Impact Statement

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

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Policy for Teacher Education Program Private Providers

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy revises the "Part I, Application for Certificates, Louisiana Applicants" and "Part II, New Certification Structure, Recommended Changes" sections of Bulletin 746 to include non-institutional providers for the Practitioner Teacher Program and to include the state, acting as a private provider.

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

This policy will have no effect on revenue collections.

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

Economic benefits would accrue to approved private providers of the Practitioner Teacher Program in the form of tuition received from participants.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0303#042

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1573C Complaint Management Procedures
(LAC 28:LXI.Chapters 1-5)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 1573, *Complaint Management Procedures*, LAC 28:LXI. The proposed codification of Bulletin 1573, *Complaint Management Procedures*, R.S. 17:1941 et seq., will not change the regulations previously adopted by the Board of Elementary and Secondary Education. The change will simply render the rules and regulations into code in accordance with Louisiana law. The proposed codification of existing Rules is required to have the rules and regulations incorporated into Louisiana Code.

Title 28

EDUCATION

Part LXI. Bulletin 1573-Complaint Management Procedures

Chapter 1. Terms, Purpose and Mandates

§101. Definitions

A. As used in this Chapter, the following words and phrases have the meaning ascribed to them in this Subsection unless a different meaning is plainly required by the context.

BESE the State Board of Elementary and Secondary Education.

Bulletin 1706C *Regulations for Implementation of the Children with Exceptionalities Act* Louisiana's Law for Children with Exceptionalities.

Child Advocate Can individual or group established to promote the interests and rights of children, especially children with exceptionalities.

Child with an Exceptionality Ca child evaluated in accordance with state regulations who is determined to be gifted, talented, emotionally disturbed, learning disabled, hard of hearing, deaf, deaf-blind, speech impaired, severe language disordered, autistic, visually impaired, multi-disabled, orthopedically disabled, traumatic brain injured, or other health impaired.

Complainant the individual(s) or organization that files a complaint with the State Department of Education on behalf of a child with an exceptionality. This complainant may be a parent, guardian, student, surrogate parent, child advocate or other individual or an organization.

Complaint Can allegation that an educational agency has violated a requirement of federal or state laws and regulations, policies, rights, procedural safeguards or program standards adopted by the BESE.

DSPC Division of Special Populations.

Local Educational Agency (LEA) Ca public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools including an educational service agency or other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under the state law.

State Department of Education (SDE) the State Department of Education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools; or, if there is no such officer or agency, an officer or agency designated by the Governor or by state law [Referred to in the Individuals with Disabilities Education Act (ACT) as State Educational Agency (SEA)].

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

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

§103. Purpose and Mandates

A. The purpose of the Complaint Management System is to meet the mandates of federal and state laws and regulations that require a mechanism to field, investigate and resolve issues regarding the provision of special education and related services to children with exceptionalities or those children suspected of having exceptionalities.

B. Federal Mandates

1. 20 U.S.C. Chapter 33 Subchapter 1C General Provisions [Public Law 105-17, Individuals with Disabilities Education Act (IDEA)]

a. Section 1412 (a) (11): "State Educational Agency Responsible for General Supervision." In general the state educational agency is responsible for ensuring that:

i. the requirements of this part are met; and

ii. all educational programs for children with disabilities in the state, including all such programs administered by any other state or local agency:

(a). are under the general supervision of individuals in the state who are responsible for educational programs for children with disabilities; and

(b). meet the educational standards of the State Educational Agency.

b. Limitation. Subparagraph a above shall not limit the responsibility of agencies in the state other than the State Educational Agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the state.

c. Exception. Notwithstanding Subparagraphs a and b, the governor (or another individual pursuant to state law), consistent with state law, may assign to any public agency in the state the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

2. *Individuals with Disabilities Education Act (IDEA) Section 1415 (b)(6)*. The procedures required by this Section shall include an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to such child.

3. 34 Code of Federal Regulations (CFR) Section 300.660-662

C. State Mandates

1. The division of special populations shall have the following powers and duties:

a. to receive and investigate complaints, to initiate its own investigations, and to conduct mediations and hearings with power of subpoena, on behalf of an individual child or group of children, regarding failure to comply with federal or state laws for children with exceptionalities;

b. to investigate and conduct hearings upon evidence of denial of equal educational opportunities of children with exceptionalities as defined in this Chapter and to take such action as may be necessary to correct the situation;

c. to investigate and conduct hearings upon evidence regarding failure to comply with federal or state laws and rules and regulations and to take such action as may be necessary to correct the situation.

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

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

Chapter 3. General Provisions

§301. Adoption of State Complaint Procedures

A. Each SEA shall adopt written procedures for:

1. resolution of any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of 34 CFR §300.662 by:

- a. providing for the filing of a complaint with the SEA; and
 - b. at the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and
2. widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state's procedures under §§ 300.660-300.662.

B. Remedies for Denial of Appropriate Services

1. In resolving a complaint where a failure to provide appropriate services is found, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:
- a. how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child;
 - b. appropriate future provision of services for all children with disabilities.

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

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

§303. Minimum State Complaint Procedures

- A. Time Limit; Minimum Procedures. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.660(a) to:
- 1. carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
 - 2. give the complainant the opportunity to submit additional information, either orally or in writing about the allegations in the complaint;
 - 3. review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this Part; and
 - 4. issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - a. findings of fact and conclusions; and
 - b. the reasons for the SEA's final decision.
- B. Time Extension; Final Decision; Implementation. The SEA's procedures described in Subsection A of this Section also must:
- 1. permit an extension of the time limit under Subclause (a) of this Section only if exceptional circumstances exist with respect to a particular complaint; and
 - 2. include procedures for effective implementation of the SEA's final decision, if needed, including:
 - a. technical assistance activities;
 - b. negotiations; and
 - c. corrective actions to achieve compliance.
- C. Complaints and Due Process Hearings Filed under This Section.

- 1. If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.520-300.528, or contains multiple issues, of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the

due process action must be resolved using the time limit and procedures described in Subclause (a) and (b) of this Section.

- 2. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

- a. the hearing decision is binding; and
- b. the SEA must inform the complainant to that effect.

- 3. A complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA.

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

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

§305. Filing a Complaint

- A. Complaints may be filed by parents, students, child advocates, surrogate parents, other individuals or organizations.

- B. Complaints may be filed in writing, by telephone call or in person.

- C. The complaint must include:

- 1. a statement that a public agency has violated a requirement of Part B of the Act or of this Part;
- 2. the facts on which the statement is based;
- 3. grievances that do not meet SDE complaint criteria are referred back to the complainants with recommendations for appropriate action to be taken.

- D. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under §300.660(a).

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

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

§307. Complaint Criteria

- A. Complaints that will be considered for review and investigation are grievances which:

- 1. allege that a local educational agency (LEA) which provides or is required to provide publicly funded special education is violating federal and/or state laws, regulations, policies, rights, procedural safeguards or program standards adopted by the BESE and administered by the SDE to assure FAPE to children with exceptionalities or children suspected of having exceptionalities;
- 2. relate to the provision of special education and related services to children with exceptionalities or suspected of having exceptionalities.

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

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

Chapter 5. Complaint Intake and Investigative Procedures

§501. Filing Complaints

- A. Complaints may be filed by parents, students, child advocates, surrogate parents, other individuals or organizations. Complaints may be filed in writing, by

telephone call or in person. A complaint must include not only a statement that a local educational agency (LEA) has violated a requirement of federal/state law or regulation but also the facts upon which the statement has been based.

B. Grievances that do not meet SDE complaint criteria are referred back to the complainants with recommendations for appropriate action to be taken.

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

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

§503. Treatment of Complaints

A. Upon receipt, the complaint is reviewed; the issues, rules and statutes that may have been violated are identified; and the investigatory procedure is determined. An investigation may consist of telephone contact, requests for submission of written documents, and/or an on-site investigation.

B. Complaints may be resolved by telephone call(s) or other alternative methods such as negotiation, mediation, conciliation, facilitation, and arbitration.

C. The attempt to resolve a dispute through the complaint management procedures does not preclude a person's right to a due process hearing. These processes are mutually exclusive. Complaint procedures may not be used to delay a person's right to a due process hearing.

D. All complaints must be resolved within 60 calendar days of receipt unless an extension is granted. Request for extensions may be made by the complainant, the local educational agency (LEA), or the SDE.

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

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

§505. Complaint Intake Procedures Log (SCL)

A. When a complaint is received and accepted by the SDE, the complaint is recorded in the SDE Complaint (SCL).

B. A Complaint Record Form (CRF) is completed; contacts with the complainant are made as the investigation proceeds and are recorded on the complaint record form. The complainant has the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. This information is documented on the CRF with all other information pertinent to the investigation.

C. The complainant is sent a letter within five business days of intake, indicating receipt of the complaint, stating the SDE representative handling the complaint and the intent to investigate and report findings within 60 calendar days.

D. The local educational agency (LEA) is sent a letter within five business days of intake indicating receipt of the complaint, a statement of the issues involved, including the applicable statute and rule citation(s), the name of the SDE representative handling the complaint, and the timeline by which the LEA must respond to the complaint.

E. The response from the local educational agency (LEA) should include either documentation to prove that the alleged violation did not take place or a plan of action to correct the violation.

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

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

§507. Investigation Procedures

A. Investigations may include written communication, telephone call(s) and/or on-site visits. During the course of an investigation, technical assistance consultations are provided, when appropriate, and the complainant is given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

B. If it is determined that an on-site investigation is necessary, an on-site investigation will be scheduled and conducted with technical assistance provided as necessary. Notice will be provided to the school system prior to the on-site investigation.

C. In determining whether a complaint requires an on-site investigation, the complaint investigator will consider, but not be limited to, the following conditions:

1. whether there is a disagreement between the parties as to the presence or absence of a certain program, service, personnel or physical entity that cannot be verified by written documentation or telephone conversation.

2. whether the written documentation requested and/or subsequent communication proves to be inconclusive in documenting the facts pertinent to the complaint.

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

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

§509. Report of Findings

A. The SDE reviews all relevant information and makes an independent determination as to whether the local educational agency (LEA) has violated any federal or state law(s), rule(s) or standard(s).

B. A written report of findings is sent to the local educational agency (LEA) and the complainant. The report includes a statement of the complaint, the applicable statutes and rules, findings of fact, conclusions, technical assistance activities and corrective actions to achieve compliance.

C. If corrective action is necessary, the local educational agency (LEA) must submit in writing to the SDE, according to timelines indicated by the SDE, a plan that includes the specific steps, material, personnel, and timelines required to resolve the complaint.

D. This corrective action plan (CAP) is approved and monitored by the SDE with an on-site monitoring review conducted when necessary.

E. When all appropriate documentation has been received by the SDE, the local educational agency (LEA) is sent written notification of complaint closure.

F. The complaint is closed within a 60 calendar day period.

G. The SDE closes the complaint in the SDE complaint log and files the complaint record with all appropriate documentation.

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

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

§511. Extension of Timelines

A. Timelines may be extended only if exceptional circumstances exist with respect to a particular complaint. The complainant and the local educational agency (LEA) will be notified in writing of the need for an extension. Reasons for extensions may include, but are not limited to, circumstances such as listed below.

1. The local educational agency (LEA) is unable to submit documentation within specified timelines because of school closing (i.e., vacation, holidays, natural disasters, school strike, malfunction in the school plant, etc.).

2. The local educational agency (LEA) or parents are unable to respond to the report within the specific timelines because of illness, death, or other extenuating circumstances.

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

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

§513. Enforcement Procedures

A. Sixty calendar days after the filing of a complaint and the subsequent failure of the local education agency (LEA) to implement the corrective action plan as determined by the SDE, the Division of Special Populations may, barring an appeal of the findings by the affected LEA, recommend to the State Superintendent that a petition to withhold the LEA's funds be made to the BESE.

B. In resolving a complaint in which it has found a failure to provide appropriate services, the SDE, pursuant to its general supervisory authority, must address:

1. how to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and

2. appropriate future provision of services for all children with disabilities.

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

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

Family Impact Statement

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

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

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

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

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

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

6. Is the family or a local government able to perform the function as contained in the proposed Rule? This item is not applicable.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1573C Complaint

Management Procedures

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

There are no estimated implementation costs or savings to state or local governmental units resulting from the proposed codification of existing Rules.

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

There is no estimated impact on revenue collections of state or local governmental units as a result of the codification of these existing Rules. There will be an estimated increase in federal special education revenue for fiscal year 2002-2003; however, this increase in federal special education revenue is not due to nor affected by the proposed codification of existing Rules.

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

The proposed codification of existing Rules will not change the responsibilities of the state education agency and local education agencies in the provision of educational programs and related services to children with disabilities. The regulatory Rules and responsibilities, promulgated by *R. S. 17:1941, The Children With Exceptionalities Act*, will not be affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment resulting from the proposed codification of existing Rules.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0303#041

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 701, 805, 1703, and 1705)

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

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

Title 28 EDUCATION

Part IV. Student Financial AssistanceC Higher Education Scholarship and Grant Programs Chapter 3. Definitions §301. Definitions

* * *

*Program Year (Non-Academic Program)C*the schedule of semesters or terms during a year leading to a vocational or technical education certificate or diploma or a non-academic undergraduate degree for such programs offered by eligible

colleges and universities, beginning with the fall semester or term, including the winter term, if applicable, and concluding with the spring semester or term or the equivalent schedule at an institution which operates on units other than semesters or terms. Enrollment in a summer term, semester or session is not required to maintain eligibility for an award.

Qualified Summer Session Those summer sessions for which the student's institution certifies that:

1. the summer session is required in the student's degree program for graduation and the student enrolled for at least the minimum number of hours required for the degree program for the session; or

2. the student can complete his program's graduation requirements in the summer session; or

3. the course(s) taken during the summer session is required for graduation in the program in which the student is enrolled and is only offered during the summer session; or

4. the course(s) taken during the summer session is in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree.

* * *

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

HISTORICAL NOTE: Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2331 (November 2002), LR 29:

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

§701. General Provisions

A. - E.1. ...

2. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by LSA-R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

3. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and each program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an

equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by LSA-R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

4. - 5.a. ...

b. In a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree receive an amount equal to the average award amount (TOPS-Tech), as defined in §301, plus any applicable stipend, prorated by two semesters, three quarters, or equivalent units in each program year (non-academic program). The stipend will be paid for each qualified summer session, semester, quarter, term or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

E.6. - G.2. ...

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

HISTORICAL NOTE: Promulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999) LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:

Chapter 8. TOPS-TECH Award

§805. Maintaining Eligibility

A. - A.4. ...

5. continue to enroll and accept the TECH award as a full-time student in an eligible college or university defined in §301, and maintain an enrolled status throughout the program year (non-academic program), unless granted an exception for cause by LASFAC; and

A.6. - B. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:

Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools

§1703. High School's Certification of Student Achievement

A. Responsibility for Reporting and Certifying Student Performance

1. Through the 2002 academic year (high school), responsibility for the identification and certification of high school graduates who meet the academic qualifications for a TOPS award is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

2. Commencing with the 2003 academic year (high school), responsibility for the submission and certification of courses attempted and the grades earned for high school graduates is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

3. The Louisiana Department of Education shall certify to LASFAC the names of students who are enrolled in and have completed all mandatory requirements through the twelfth grade level of a state-approved home study program.

B. Procedures for Reporting and Certifying Student Performance

1.a. Through the 2002 academic year (high school), the responsible high school authority shall record student performance on the form provided by LASFAC or in an electronic format pre-approved by LASFAC. The certification form shall be completed, certified and returned to LASFAC by the deadline specified on the form.

b. Commencing with the 2003 academic year (high school), the responsible high school authority shall submit the required student information in a standard electronic format approved by LASFAC.

2.a. Through the 2002 academic year (high school), the certification form shall contain, but is not limited to, the following reportable data elements:

i. student's name, address, phone number and social security number;

ii. month and year of high school graduation;

iii. final cumulative high school grade point average for all courses attempted, converted to a maximum 4.00 scale, if applicable (Note: Beginning with students graduating in 2002-2003, the cumulative high school grade point average will be calculated by using only grades obtained in completing the core curriculum); and

iv. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended;. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

b. Commencing with the 2003 academic year (high school), certification shall contain, but is not limited to, the following reportable data elements:

i. student's name and social security number;

ii. month and year of high school graduation;

iii. the course code for each course completed;

iv. the grade for each course completed;

v. the grading scale for each course reported; and

vi. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

3. Through the 2002 academic year (high school), the responsible high school authority shall certify to LASFAC the final cumulative high school grade point average of each applicant and that average shall be inclusive of grades for all courses attempted and shall be computed and reported on a maximum 4.00 grading scale.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. (In this example, the school awards one extra quality point for an honors course.)

i. Example: an applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

$$5X = 12; X = 2.40$$

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

4. Commencing with the 2003 academic year (high school), LASFAC shall determine whether high school graduates have completed the core curriculum and compute the TOPS cumulative high school grade point average for each such graduate using a maximum 4.00 grading scale. Grades awarded on other than a maximum 4.00 scale shall be converted to a maximum 4.00 scale.

C. Certifying 1998 graduates for the TOPS performance award. 1998 graduates who are ranked in the top five percent of their graduating class in accordance with §1703 shall be credited with having completed the core curriculum for purposes of the TOPS; however, only those meeting the

following criteria shall be eligible for the performance award by LASFAC:

1. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

2. an ACT score of at least 23.

D. Certification.

1. Through the 2002 academic year (high school), the high school headmaster or principal or designee shall certify that:

a. all data supplied on the certification form are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

c. the school under the principal's jurisdiction shall reimburse LASFAC for the amount of a program award which was disbursed on behalf of a graduate of the school, when it is subsequently determined by audit that the school incorrectly certified the graduate.

2. Commencing with the 2003 academic year (high school), the submission of the required data by the high school headmaster or principal or designee shall constitute a certification that:

a. all data reported are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. Commencing with the 2003 academic year (high school), if a student is determined to be eligible for a TOPS Award based on data that is incorrect and the student was in fact ineligible for a TOPS award or the level awarded, the high school must reimburse LASFAC for the amount paid in excess of what the student was eligible for.

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

HISTORICAL NOTE: Promulgated LR 24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26: (September 2000), LR 26: (October 2000), LR 27:1863 (November 2001), LR 29:

§1705. Notification of Certified Students

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS performance and honors awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and to make the presentation awarding the endorsed certificates of achievement.

C.1. Through the 2002 academic year (high school), if the certifying authority elects to notify students of their certification, then the following disclaimer shall be included

in any communication to the student: "Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program.

a. You must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and

b. You must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and

c. You must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and

d. You must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

2. Commencing with the 2003 academic year (high school), if the certifying authority elects to notify students of their potential eligibility for an award, then the following disclaimer shall be included in any communication to the student: "Although it appears that you have satisfied the academic requirements for a Tuition Opportunity Program for Student s(TOPS) Award based on this school's review of the core curriculum courses you have completed and calculation of your TOPS cumulative high school grade point average, you must satisfy all of the following conditions to redeem a scholarship under this program:

a. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;

b. LASFAC must determine that your TOPS cumulative high school grade point average based on the TOPS core curriculum meets the statutory requirements;

c. you must be a Louisiana resident as defined by LASFAC;

d. you must be accepted for enrollment by an eligible Louisiana postsecondary institution and be registered as a full-time undergraduate student no later than the next semester following the first anniversary of your graduation from high school;

e. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for consideration for state; and

f. you must have met all academic and nonacademic requirements and be officially notified of your award by LASFAC."

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

HISTORICAL NOTE: Promulgated LR 24:644 (April 1998), amended LR 24:1913 (October 1998). Repromulgated LR 27:1864 (November 2001), LR 29:126 (February 2003), LR 29:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., April 20, 2003, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

RULE TITLE: Scholarship/Grant Programs

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

In addition to the nominal cost of publishing in the *Louisiana Register*, the agency anticipates no costs to the program as a result of these changes.

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

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

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

These changes accommodate the technical colleges' transition from term enrollment periods to semesters and revise responsibilities of high schools regarding certification of student achievement and notification given by high schools to students who may be eligible for a TOPS award.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Badge Eldredge
General Counsel
0303#087

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

The Louisiana Tuition Trust Authority (LATA) announces its intention to amend Rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 3091-3099.2).

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

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance—Higher
Education Savings**

Chapter 3. Education Savings Account

Subchapter A. Student Tuition Trust Authority

§315. Miscellaneous Provisions

A. - B.6. ...

7. For the year ending December 31, 2002, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.82 percent.

8. For the year ending December 31, 2002, the Earnings Enhancements Fund earned an interest rate of 5.91 percent.

C. - R. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23: 718 (June 1997), amended LR 24:1274 (July 1998), amended LR 26:1263

(June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., April 20, 2003, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

**RULE TITLE: Student Tuition and Revenue Trust
(START Saving) Program**

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

There are no implementation costs or savings to state or local governmental units as a result of these changes.

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

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

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

These changes adopt interest rates for deposits and earnings enhancements for the year ending December 31, 2002, which have slightly declined. START account owners will earn slightly less than in the past years.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Badge Eldredge
General Counsel
0303#086

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Incorporation by Reference C2002
(LAC 33:I.3931; III.507, 2160, 3003,
5116, 5122, 5311, 5901; V.Chapter 30;
IX.2301, 2531, 2533; and XV.1517)(OS047*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.3931; III.111, 507, 2160, 3003, 5116, 5122, 5311, and 5901; V.Chapter 30.Appendices A-L; IX.2301, 2531, and 2533; and XV.1517 (Log #OS047*).

This proposed Rule is identical to federal regulations found in 10 CFR 71, Appendix A, January 1, 2002; 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, 70.6(a), 117.3, 136, 266, Appendices I-IX and XI-XIII, 302.4, 401, and 405-471, July 1, 2002; and 67 FR 58997, September 19, 2002 and 67 FR 64260 - 64268, October 17, 2002, which are applicable

in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This proposed Rule incorporates by reference into LAC 33:I, III, V, IX, and XV the corresponding regulations in 10 CFR 71, Appendix A, January 1, 2002; 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, 70.6(a), 117.3, 136, 266, Appendices I-IX and XI-XIII, 302.4, 401, and 405-471, July 1, 2002; and amendments to Part 420 in 67 FR 58997, September 19, 2002 and Part 430 in 67 FR 64260 - 64268, October 17, 2002. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference package is being proposed to keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this proposed Rule are to mirror the federal regulations in order to maintain equivalency.

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

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. ...

1. 40 CFR 117.3, July 1, 2002, Table 117.3C Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

2. 40 CFR 302.4, July 1, 2002:

a. Table 302.4C List of Hazardous Substances and Reportable Quantities; and

b. Appendix A to §302.4C Sequential CAS Registry Number List of CERCLA Hazardous Substances.

B. - Note @. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025.J, 2060.H, 2076.D, 2183.I, 2194.C, 2204.A, and 2373.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:

Part III. Air

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2002. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43C Capture Efficiency Test Procedures

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2002, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:

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

Subchapter A. Incorporation by Reference (IBR)

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

Part 60

A. Except as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2002, are hereby incorporated by reference as they apply to the state of Louisiana.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29: (March 2003), LR 29:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR

Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2002, and specifically listed in the following table are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR 61	Subpart/Appendix Heading

[See Prior Text in Subpart A – Appendix C]	

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), LR 25:1464 (August 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air

Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2002, are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

B. - C.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999), LR 25:1798 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:

Chapter 53. Area Sources of Toxic Air Pollutants

Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2002, and specifically listed in the following table are hereby incorporated by reference as they apply to area sources in the state of Louisiana.

40 CFR 63	Subpart/Appendix Heading

[See Prior Text in Subpart A – M]	
Subpart N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart O	Ethylene Oxide Emissions Standards for Sterilization Facilities
Subpart T	National Emission Standards for Halogenated Solvent Cleaning

[See Prior Text in Subpart X]	
Subpart LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
Subpart VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
Subpart EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

B. - C....

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), LR 25:1464 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2002.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

Appendices

Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals

A. 40 CFR 266, Appendix I, July 1, 2002, is hereby incorporated by reference.

Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine

A. 40 CFR 266, Appendix II, July 1, 2002, is hereby incorporated by reference.

Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride

A. 40 CFR 266, Appendix III, July 1, 2002, is hereby incorporated by reference.

Appendix D. Reference Air Concentrations

A. 40 CFR 266, Appendix IV, July 1, 2002, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, Appendix VIII and 266, Appendix V shall mean LAC 33:V.3105.Table 1 and Appendix E of this Chapter, respectively.

Appendix E. Risk Specific Doses (10⁻⁵)

A. 40 CFR 266, Appendix V, July 1, 2002, is hereby incorporated by reference.

Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]

A. 40 CFR 266, Appendix VI, July 1, 2002, is hereby incorporated by reference.

Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues

A. 40 CFR 266, Appendix VII, July 1, 2002, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105.Table 1, 3025.B.1 and B.2.a, and Chapter 22.Table 2, respectively.

Appendix H. Organic Compounds for Which Residues Must be Analyzed

A. 40 CFR 266, Appendix VIII, July 1, 2002, is hereby incorporated by reference.

Appendix I. Methods Manual for Compliance with the BIF Regulations

A. 40 CFR 266, Appendix IX, July 1, 2002, is hereby incorporated by reference, except as follows.

1. - 3. ...

4. Repealed.

B. ...

Appendix J. Lead-Bearing Materials That May Be Processed in Exempt Lead Smelters

A. 40 CFR 266, Appendix XI, July 1, 2002, is hereby incorporated by reference.

Appendix K. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces

A. 40 CFR 266, Appendix XII, July 1, 2002, is hereby incorporated by reference, except that the footnote should be deleted.

Appendix L. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

A. 40 CFR 266, Appendix XIII, July 1, 2002, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII shall mean LAC 33:V.3105.Table 1.

Part IX. Water Quality

Chapter 23. The LPDES Program

Subchapter A. Definitions and General Program Requirements

§2301. General Conditions

A - E ...

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter shall refer to those regulations published in the July 1, 2002 CFR, unless otherwise noted.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:

Subchapter N. Incorporation by Reference

§2531. 40 CFR Part 136

A. 40 CFR Part 136, July 1, 2002, Guidelines Establishing Test Procedures for the Analysis of Pollutants, is hereby incorporated by reference in its entirety.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:

§2533. 40 CFR Chapter I, Subchapter N

A. 40 CFR, Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405 – 471, July 1, 2002, and amendments to Part 420 in 67 FR 58997, September 19, 2002 and Part 430 in 67 FR 64260-64268, October 17, 2002, are hereby incorporated by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:

Part XV. Radiation Protection

Chapter 15. Transportation of Radioactive Material

§1517. Incorporation by Reference

A. The department incorporates by reference 10 CFR Part 71, Appendix A, January 1, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), IR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS047*. Such comments must be received no later than April 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of OS047*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0303#070

NOTICE OF INTENT

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

Incorporation by Reference of 40 CFR Part 93
(LAC 33:III.1432)(AQ231*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.1432 (Log #AQ231*).

This proposed rule is identical to federal regulations found in 40 CFR Part 93, Subpart A, July 1, 2002, and 67 FR 50808-50817, August 6, 2002, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This proposed rule incorporates by reference into the state transportation conformity rule the latest edition of 40 CFR Part 93, dated July 1, 2002, and EPA amendments to the federal transportation conformity rule that were finalized August 6, 2002. The EPA rule amendments change two provisions of the transportation conformity rule that will provide state and local governments with additional time in the transportation conformity process. The changes are that areas designated nonattainment for the first time have a one-year grace period following the effective date of their nonattainment designation before conformity applies and conformity is required within 18 months of EPA's finding that SIP motor vehicle emission budgets are adequate for use in the conformity process. The Rule is effective upon the date of promulgation. The basis and rationale for this rule are to mirror the federal transportation conformity regulations as amended through August 6, 2002.

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

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 14. Conformity
Subchapter B. Conformity to State or Federal
Implementation Plans of Transportation
Plans, Programs, and Projects Developed,
Funded, or Approved Under Title 23
U.S.C. or the Federal Transit Act**

§1432. Incorporation by Reference

A. 40 CFR Part 93, Subpart A, July 1, 2002, and amended Sections 102-104 in the *Federal Register*, Volume 67, No. 151, August 6, 2002, pages 50808 - 50817, are hereby incorporated by reference with the exclusion of Section 105.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ231*. Such comments must be received no later than April 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of AQ231.*

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0303#069

NOTICE OF INTENT

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

Motiva Enterprises Delisting Petition
(LAC 33:V.Chapter 49)(HW079P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.Chapter 49.Appendix E (Log # HW079P).

Motiva Enterprises LLC is petitioning to exclude from the hazardous waste regulations (delist) residual solids resulting

from the thermal desorption recycling of oil-bearing secondary materials at the Norco Oil Recovery Facility in Norco, Louisiana. LAC 33:V.105.M allows a hazardous waste generator to petition the department for this kind of rulemaking when a listed hazardous waste does not meet any of the criteria that justified the original listing. Based on extensive testing, the department has determined that the nature of this material does not warrant retaining this material as a hazardous waste. The basis and rationale for this proposed rule are to grant the delisting petition based on the supporting documentation submitted by Motiva Enterprises of Norco, Louisiana.

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

Title 33

ENVIRONMENTAL QUALITY

**Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality-
Hazardous Waste**

Chapter 49. Lists of Hazardous Wastes

Appendix E. Wastes Excluded Under LAC 33:V.105.M

Table E1 - Wastes Excluded	
Facility	Address
*** [See Prior Text in DuPont Dow Elastomers LLC – Marathon Oil Co.]	
Facility	Address
Motiva Enterprises LLC	Norco, LA
Waste Description	
Residual solids, at a maximum annual generation rate of 10,000 cubic yards per year (7,500 tons/year), are generated from the thermal desorption recycling of oil-bearing secondary materials resulting from petroleum processing operations, which are classified as newly generated EPA Hazardous Waste Number F037, petroleum refinery primary oil/water/solids separation sludge (effective February 8, 1999, per the updated definition promulgated on August 6, 1998, and the corrected definition dated June 8, 2000). The constituents of concern for F037 waste are listed as hexavalent chromium, lead, benzene, benzo(a)pyrene, and chrysene (see LAC 33:V.4901). Motiva must implement a testing and management program that meets the following conditions for the exclusion to be valid.	
(1). Testing Sample collection and analyses, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.	
(1)(A). Inorganic Testing During the first 12 months of this exclusion, Motiva must collect and analyze a monthly composite sample of the residual solids. Composite samples must be composed of a minimum of two representative grab samples from each operating day during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, silver, vanadium, and zinc, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Motiva may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.	

<p>(1)(B). Subsequent Inorganic Testing Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(A). Motiva must continue to monitor operating conditions and analyze quarterly composite samples representative of normal operations. The samples must be composed of representative grab samples from each operating day during a representative week of operation, during the first month of each quarterly period. These quarterly representative composite samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Motiva must re-institute testing as required in condition (1)(A). Motiva may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p>
<p>(1)(C). Organic Testing During the first 12 months of this exclusion, Motiva must collect and analyze two monthly grab samples of the residual solids. These two representative grab samples should be collected on different operating days during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for anthracene, benzene, toluene, xylenes, carbon disulfide, chrysene, naphthalene, and pyrene, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), then Motiva may replace the organic testing required in condition (1)(C) with the organic testing required in condition (1)(D). Condition (1)(C) shall remain effective until this concurrence is reached.</p>
<p>(1)(D). Subsequent Organic Testing Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(C). Motiva must continue to monitor operating conditions and analyze two annual grab samples representative of normal operations. The samples must be representative grab samples from different operating days during a representative week of operation, during the first month of each annual period. These annual representative grab samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the annual sample, Motiva must re-institute testing as required in condition (1)(C). Motiva may, at its discretion, analyze grab samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p>
<p>(2). Waste Holding and Handling Motiva must store as hazardous wastes all residual solids generated until each batch has completed verification testing, as specified in conditions (1)(A) - (1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any monthly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated and/or stabilized as allowed below until the residual solids meet the delisting levels, or managed and disposed of in accordance with Subtitle C of RCRA. If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in condition (3)(A), then Motiva may stabilize the material with Type I portland cement and/or hydrated lime as demonstrated in the petition to immobilize the metals. Following stabilization, Motiva must repeat analyses in condition (3)(A) prior to disposal.</p>

<p>(3). Delisting Levels Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. All leachable concentrations in the extract must be less than the following levels (all units are milligrams per liter).</p>
<p>(3)(A). Inorganic Constituents Antimony - 0.50; Arsenic - 0.50; Barium - 50.0; Chromium - 0.50; Lead - 0.50; Mercury - 0.05; Nickel - 5.0; Selenium - 1.0; Silver - 0.5; Vanadium - 1.6; Zinc - 50.0.</p>
<p>(3)(B). Organic Constituents Anthracene - 0.20; Benzene - 0.10; Carbon disulfide - 4.8; Chrysene - 0.05; Naphthalene - 0.05; Pyrene - 0.05; Toluene - 0.10; Xylenes - 0.10.</p>
<p>(4). Changes in Operating Conditions If Motiva significantly changes the operating conditions specified in the petition, Motiva must notify the department in writing. Following receipt of written approval by the department, Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).</p>
<p>(4)(A). Processing Equipment Motiva may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Motiva changes operating equipment, i.e., generic thermal desorption units, Motiva must re-institute processing and initiate testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required in conditions (1)(A) and (1)(C), including quality control data, obtained during this period, no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).</p>
<p>(4)(B). Batch Processing Motiva may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Motiva initiates batch processing and changes the operating conditions established under condition (1), Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) during such batch processing events, monitor unit operating conditions, and perform testing required by conditions (1)(A) and (1)(C), as appropriate. Following the completion of batch processing operations, Motiva must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.</p>
<p>(5). Data Submittal Motiva must notify the department, in writing, at least two weeks prior to initiating condition (1)(A). All data obtained to fulfill condition (1) must be submitted to the Assistant Secretary of the Office of Environmental Services, LDEQ, 7290 Bluebonnet Blvd, Baton Rouge, LA 70810, within 60 days after each sampling event. Records of operating conditions and analytical data from condition (1) must be compiled, summarized, and maintained on-site for a minimum of three years. These records and data must be furnished upon request by the department and made available for inspection. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time shall be considered by the department, at its discretion, sufficient basis to revoke the exclusion. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted.</p>

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that any of this information is determined by the department, in its sole discretion, to be false, inaccurate, or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had been in effect, or to the extent directed by the department, and that the company will be liable for any actions taken in contravention of the company's environmental obligations under the Louisiana Environmental Quality Act premised upon the company's reliance on the void exclusion."

(6). Reopener Language

If, at any time after disposal of the delisted waste, Motiva possesses or is otherwise made aware of any environmental data (including but not limited to, leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by the department in granting the petition, Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. If the testing of the waste, as required by condition (1), does not meet the delisting requirements of condition (3), Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. Based on the information described herein and any other information received from any source, the department will make a preliminary determination as to whether the reported information requires that the department take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. If the department determines that the reported information does require departmental action, the department will notify the facility, in writing, of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Motiva with an opportunity to present information as to why the proposed action is not necessary. Motiva shall have 10 days from the date of the department's notice to present such information. Following the receipt of information from Motiva, or if no such information is received within 10 days, the department will issue a final written determination describing the departmental actions that are necessary to protect human health or the environment. Any required action described in the department's determination shall become effective immediately, unless the department provides otherwise.

(7). Notification Requirements

Motiva must provide a one-time written notification to any state regulatory agency in a state to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290

Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW079P. Such comments must be received no later than May 1, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of HW079P.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Motiva Enterprises Delisting Petition**

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

Motiva Enterprises LLC is requesting delisting of its residual solids. Approving or disapproving this delisting will not affect state agency staffing levels. There are no costs or savings associated with implementation of this Rule.

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

The state will collect \$1,923/yr more in industrial waste tonnage fee revenue when the residual solids are delisted. Current hazardous waste disposal is at Waste Management's facility in Emelle, AL. Since disposal is out of state, there is no state revenue currently generated. When the delisting is approved, the solid waste may be disposed in a local solid waste landfill.

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

Motiva Enterprises LLC will pay \$1,923 per year more in industrial waste tonnage fees. Motiva Enterprises LLC and Shell Chemical (co-located at the Norco East Site) will have a net estimated savings of approximately \$295,000 per year for costs related to transportation and disposal. The analytical laboratory employed by Motiva will eventually experience a

decrease in income of approximately \$12,500 per year. The delisting of these residual solids will not relieve the company from any liability for these wastes under federal or state law.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The economic benefits of the delisting will help ensure competitive pricing and, thereby, continued employment associated with this oil recovery operation.

James H. Brent, Ph.D.
Assistant Secretary
0303#068

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Postponement of Permit Deadline for Oil
and Gas Construction Activities
(LAC 33:IX.2341)(WQ047*)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2341 (Log #WQ047*).

This proposed Rule is identical to federal regulations found in 40 CFR 122.26, as amended in 68 FR 11325 - 11330, March 10, 2003, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

The proposed Rule will allow operators at construction sites related to oil and gas exploration, production, processing, or treatment operations, or transmission facilities that disturb equal to or greater than one acre and less than five acres of land to legally conduct those construction activities without being permitted until March 10, 2005, the federal permit authorization deadline for those construction activities. The Louisiana Pollutant Discharge Elimination System (LPDES) program delegation agreement with EPA requires consistency with the federal NPDES program. EPA has postponed the permit authorization deadline for NPDES storm water permits for oil and gas related construction activities in this category until March 10, 2005. The basis and rationale for this Rule are to mirror the federal regulations.

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

**Title 33
ENVIRONMENTAL QUALITY**

Part IX. Water Quality

Chapter 23. The LPDES Program

**Subchapter B. Permit Application and Special LPDES
Program Requirements**

§2341. Storm Water Discharges

A. - E.7.c. ...

8. Any storm water discharge associated with small construction activity identified in Subparagraph B.15.a of this Section, other than discharges associated with small construction activity at oil and gas exploration, production, process, and treatment operations or transmission facilities, requires permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by March 10, 2005.

E.9. - G.4.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552 (November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ047*. Such comments must be received no later than April 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of WQ047*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo

James H. Brent, Ph.D.
Assistant Secretary

0303#071

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Group Benefits

Managed Care Option (MCO)C Plan of Benefits (LAC 32:IX.Chapters 1-7)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB gives notice of its intent to adopt an entire new Plan of Benefits for the Office of Group Benefits, designating it as the Managed Care Option (MCO) Plan of Benefits. The MCO Plan of Benefits sets forth the terms and conditions pursuant to which eligibility and benefit determinations are made with regard to the self-insured health and accident benefits plan, designated as the MCO Plan, provided for state employees and their dependents pursuant to R.S. 42:851 et seq. LAC Title 32, Part IX, entitled "Health Maintenance OrganizationsCHMO" will be repealed in its entirety and replaced by a new Part IX, entitled "Managed Care Option (MCO)C Plan of Benefits," as follows.

The proposed Rule has no known impact on family formation, stability, or autonomy.

Title 32

EMPLOYEE BENEFITS

Part IX. Managed Care Option (MCO)C Plan of Benefits

Chapter 1. Eligibility

§101. Persons to be Covered

NOTE: Eligibility requirements apply to all participants in the program, whether in the PPO plan, the EPO plan, the MCO Plan, or an HMO plan.

A. Employee Coverage

1. *Employee* see §601.

2. Husband and Wife, both *Employees*. No one may be enrolled simultaneously as an *employee* and as a *dependent* under the plan, nor may a *dependent* be covered by more than one *employee*. If a covered spouse chooses at a later date to be covered separately, and is eligible for coverage as an *employee*, that person will be a covered *employee* effective the first day of the month after the election of separate coverage. The change in coverage will not increase the benefits.

3. Effective Dates of Coverage, New *Employee*. Coverage for each *employee* who completes the applicable enrollment form and agrees to make the required payroll contributions to his *participant employer* is to be effective as follows.

a. If employment begins on the first day of the month, coverage is effective the first day of the following month.

b. If employment begins on the second day of the month or after, coverage is effective the first day of the second month following employment.

c. *Employee coverage* will not become effective unless the *employee* completes an application for coverage within 30 days following the date of employment. An *employee* who completes an application after 30 days following the date of employment will be considered an overdue applicant.

4. Re-Enrollment, Previous Employment

a. An *employee* whose employment terminated while covered, who is re-employed within 12 months of the date of termination will be considered a re-enrollment, previous employment applicant. A re-enrollment previous employment applicant will be eligible for only that classification of coverage (*employee*, *employee* and one *dependent*, family) in force on the effective date of termination.

b. If an *employee* acquires an additional *dependent* during the period of termination, that *dependent* may be covered if added within 30 days of re-employment.

6. Members of Boards and Commissions. Except as otherwise provided by law, members of boards or commissions are not eligible for participation in the plan. This Section does not apply to members of school boards or members of state boards or commissions who are defined by the *participant employer* as full time *employees*.

7. Legislative Assistants. Legislative assistants are eligible to participate in the plan if they are declared to be full-time *employees* by the *participant employer* and have at least one year of experience or receive at least 80 percent of their total compensation as legislative assistants.

8. Pre-Existing Condition (PEC)CNew *employees* (on and after July 1, 2001).

a. The terms of the following paragraphs apply to all eligible *employees* whose employment with a *participant employer* commences on or after July 1, 2001, and to the *dependents* of such *employees*.

b. The program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

c. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the enrollment date. The provisions of this section do not apply to pregnancy

d. If the *covered person* was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

B. Retiree Coverage

1. Eligibility

a. *Retirees of participant employers* are eligible for *retiree* coverage under this Plan.

b. An *employee* retired from a *participant employer* may not be covered as an *employee*.

c. *Retirees* are not eligible for coverage as overdue applicants.

2. Effective Date of Coverage. *Retiree* coverage will be effective on the first day of the month following the date of retirement, if the *retiree* and *participant employer* have agreed to make and are making the required contributions.

C. Dependent Coverage

1. Eligibility. A *dependent* of an eligible *employee* or *retiree* will be eligible for *dependent coverage* on the later of the following dates:

a. the date the *employee* becomes eligible;

b. the date the *retiree* becomes eligible;

c. the date the covered *employee* or covered *retiree* acquires a *dependent*.

2. Effective Dates of Coverage

a. *Dependents of Employees*. Coverage for *dependents* will be effective on the date the *employee* becomes eligible for *dependent coverage*.

b. *Dependents of Retirees*. Coverage for *dependents* of *retirees* will be effective on the first day of the month following the date of retirement if the *employee* and his *dependents* were covered immediately prior to retirement. Coverage for *dependents* of *retirees* first becoming eligible for *dependent coverage* following the date of retirement will be effective on the date of marriage for new spouses, the date of birth for newborn *children*, or the *date acquired* for other classifications of *dependents*, if application is made within 30 days of the date of eligibility.

D. Pre-Existing Condition (PEC) Overdue Application

1. The terms of the following paragraphs apply to all eligible *employees* who apply for coverage after 30 days from the date the *employee* became eligible for coverage and to all eligible *dependents* of *employees* and *retirees* for whom the application for coverage was not completed within 30 days from the *date acquired*. The provisions of this Section do not apply to military reservists or national guardsmen ordered to active duty who return to state service and reapply for coverage with the *program* within 30 days of the date of reemployment. Coverage will be reinstated effective on the date of return to state service. The effective date of coverage will be:

a. the first day of the month following the date of receipt by the *program* of all required forms prior to the fifteenth of the month;

b. the first day of the second month following the date of the receipt by the *program* of all required forms on or after the fifteenth of the month.

2. The *program* will require that all overdue applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

3. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received

during the six months immediately prior to the enrollment date. The provisions of this section do not apply to pregnancy

4. If the *covered person* was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

E. Special Enrollments *CHIPAA*. In accordance with *HIPAA*, certain eligible persons for whom the option to enroll for coverage was previously declined, and who would be considered overdue applicants, may enroll by written application to the *participant employer* under the following circumstances, terms and conditions for special enrollments.

1. Loss of Other Coverage. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined because the *employees* or *dependents* had other coverage which has terminated due to:

a. loss of eligibility through separation, divorce, termination of employment, reduction in hours, or death of the *plan* participant; or

b. cessation of *participant employer* contributions for the other coverage, unless the *participant employer* contributions were ceased for cause or for failure of the individual participant to make contributions; or

c. the *employee* or *dependent* having had *COBRA* continuation coverage under a *group health plan* and the *COBRA* continuation coverage has been exhausted, as provided in *HIPAA*.

2. After Acquiring *Dependents*. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined when the *employee* acquires a new *dependent* by marriage, birth, adoption, or placement for adoption.

a. A special enrollment application must be made within 30 days of the termination date of the prior coverage or the date the new *dependent* is acquired. Persons eligible for special enrollment for which an application is made more than 30 days after eligibility will be considered overdue applicants subject to a pre-existing condition limitation.

b. The effective date of coverage shall be:

i. for loss of other coverage or marriage, the first day of the month following the date of receipt by the *program* of all required forms for enrollment;

ii. for birth of a *dependent*, the date of birth;

iii. for adoption, the date of adoption or placement for adoption.

c. Special enrollment applicants must complete acknowledgment of pre-existing condition and statement of physical condition forms.

d. Medical expenses incurred during the first 12 months that coverage for the special enrollee is in force under this *plan* will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care or *treatment* was recommended or received during the 6-

month period immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

e. If the special enrollee was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in *HIPAA*, the duration of the prior coverage will be credited against the initial 12-month period used by the *program* to exclude benefits for a pre-existing condition if the termination under the prior coverage occurred within 63 days of the date of coverage under the *plan*.

F. *Retirees* Special Enrollment. *Retirees* will not be eligible for special enrollment, except under the following conditions:

1. retirement began on or after July 1, 1997;
2. the *retiree* can document that creditable coverage was in force at the time of the election not to participate or continue participation in the *plan*;
3. the *retiree* can demonstrate that creditable coverage was maintained continuously from the time of the election until the time of requesting special enrollment;
4. the *retiree* has exhausted all *COBRA* and/or other continuation rights and has made a formal request to enroll within 30 days of the loss of other coverage; and
5. the *retiree* has lost eligibility to maintain other coverage through no fault of his/her own and has no other creditable coverage in effect.

G. Health Maintenance Organization (HMO) Option

1. In lieu of participating in the *plan*, *employees* and *retirees* may elect coverage under an approved HMO.

2. New *employees* may elect to participate in an HMO during their initial period of eligibility. Each HMO will hold an annual enrollment period for a coverage effective date of July 1. Transfer of coverage from the *plan* to the HMO or vice-versa will only be allowed during this annual enrollment period. Transfer of coverage will also be allowed as a consequence of the *employee* being transferred into or out of the HMO geographic service area, with an effective date of the first day of the month following transfer.

3. If a *covered person* has elected to transfer coverage, but is hospitalized on July 1, the *plan*, which is providing coverage prior to July 1, will continue to provide coverage up to the date of discharge from the *hospital*.

H. *Medicare* Risk HMO Option for *Retirees*. *Retirees* who are eligible to participate in a *Medicare* Risk HMO plan who cancel coverage with the *program* upon enrollment in a *Medicare* Risk HMO plan may re-enroll in the *program* upon withdrawal from or termination of coverage in the *Medicare* Risk HMO plan, at the earlier of the following:

1. during the month of November, for coverage effective January 1; or
2. during the next annual enrollment, for coverage effective at the beginning of the next *plan* year.

I. Tricare for Life Option for Military *Retirees*. *Retirees* eligible to participate in the Tricare for Life (TFL) option on and after October 1, 2001 who cancel coverage with the *program* upon enrollment in TFL may re-enroll in the *program* in the event that the TFL option is discontinued or its benefits significantly reduced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§103. Continued Coverage

A. Leave of Absence. If an *employee* is allowed an approved leave of absence by his *participant employer*, he may retain his coverage for up to one year, if the premium is paid. Failure to do so will result in cancellation of coverage. The *program* must be notified by the *employee* and the *participant employer* within 30 days of the effective date of the leave of absence.

B. Disability

1. *Employees* who have been granted a waiver of premium for basic or supplemental life insurance prior to July 1, 1984 may continue health coverage for the duration of the waiver if the *employee* pays the total contribution to the *participant employer*. *Disability* waivers were discontinued effective July 1, 1984.

2. If a *participant employer* withdraws from the *plan*, health and life coverage for all *covered persons* will terminate as of the effective date of withdrawal.

C. Surviving *Dependents/Spouse*. The provisions of this Section are applicable to surviving *dependents* who elect to continue coverage following the death of an *employee* or *retiree*. On or after July 1, 1999, eligibility ceases for a *covered person* who becomes eligible for coverage in a *group health plan* other than *Medicare*. Coverage under the *group health plan* may be subject to *HIPAA*.

1. Benefits under the *plan* for *covered dependents* of a deceased *covered employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurred unless the surviving *covered dependents* elect to continue coverage.

a. The surviving legal spouse of an *employee* or *retiree* may continue coverage until the surviving spouse becomes eligible for coverage in a *group health plan* other than *Medicare*.

b. The surviving *children* of an *employee* or *retiree* may continue coverage until they are eligible for coverage under a *group health plan* other than *Medicare*, or until attainment of the termination age for *children*, whichever occurs first.

c. Surviving *dependents/spouse* will be entitled to receive the same *participant employer* premium contributions as *employees* and *retirees*.

d. Coverage provided by the civilian health and medical program of the uniform services will not be sufficient to terminate the coverage of an otherwise eligible surviving legal spouse or a *dependent child*.

2. A surviving spouse or *dependent* cannot add new *dependents* to continued coverage other than a child of the deceased *employee* born after the *employee's* death.

3. Participant Employer/Dependent Responsibilities

a. It is the responsibility of the *participant employer* and surviving *covered dependent* to notify the *program* within 60 days of the death of the *employee* or *retiree*.

b. The *program* will notify the surviving *dependents* of their right to continue coverage.

c. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification, and premium payment must be made within 45 days of the date continued coverage is elected for coverage retroactive to the date coverage would have otherwise terminated.

d. Coverage for the surviving spouse under this Section will continue until the earliest of the following events occurs:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. on or after July 1, 1999, becomes eligible for coverage under a *group health plan* other than *Medicare*.

e. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following events:

- i. failure to pay the applicable premium;
- ii. on or after July 1, 1999, becomes eligible for coverage under any *group health plan* other than *Medicare*;
- iii. the attainment of the termination age for *children*.

D. *Over-Age Dependents*. If an unmarried, never married *dependent* child is incapable of self-sustaining employment by reason of mental retardation or physical incapacity and became incapable prior to the termination age for *children* and is dependent upon the covered *employee* for support, the coverage for the *dependent* child may be continued for the duration of incapacity.

1. Prior to attainment of age 21, the *program* must receive documentation for *dependents* who are mentally retarded or who have a physical incapacity.

2. For purposes of this Section, mental illness does not constitute mental retardation.

3. The *program* may require that the covered *employee* submit current proof from a licensed medical doctor of continued mental retardation or physical incapacity as often as it may deem necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§105. COBRA

A. Employees

1. Benefits under this *plan* for a covered *employee* will terminate on the last day of the calendar month during which employment is terminated voluntarily or involuntarily, the *employee* no longer meets the definition of an *employee* or coverage under a leave of absence expires unless the covered *employee* elects to continue at the *employee's* own expense. *Employees* terminated for gross misconduct are not eligible for *COBRA*.

2. It is the responsibility of the *participant employer* to notify the *program* within 30 days of the date coverage would have terminated because of any of the foregoing events and the *program* will notify the *employee* within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification and premium payment must be made within 45 days of the date the *employee* elects continued coverage, for coverage retroactive to the date coverage would have otherwise terminated. Coverage under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 18 months from the date coverage would have terminated;
- c. entitlement to *Medicare*;

d. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

B. Surviving Dependents

1. Benefits for covered surviving *dependents* of an *employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurs, unless the surviving covered *dependents* elect to continue coverage at his/her own expense.

2. It is the responsibility of the *participant employer* or surviving covered *dependents* to notify the *program* within 30 days of the death of the *employee* or *retiree*. The *program* will notify the surviving *dependents* of their right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification. Premium payment must be made within 45 days of the date the continued coverage was elected, retroactive to the date coverage would have terminated.

a. Coverage for the surviving *dependents* under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

b. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. 36 months beyond the date coverage would have terminated;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition.

C. Divorced Spouse

1. Coverage under this *plan* will terminate on the last day of the month during which dissolution of the marriage occurs by virtue of a legal decree of divorce from the *employee* or *retiree*, unless the covered divorced spouse elects to continue coverage at his or her own expense. It is the responsibility of the divorced spouse to notify the *program* within 60 days from the date of divorce and the *program* will notify the divorced spouse within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of notification. Premium payment must be made within 45 days of the date continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

2. Coverage for the divorced spouse under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

D. Dependent Children

1. Benefits under this *plan* for a covered *dependent* child of a covered *employee* or *retiree* will terminate on the last day of the month during which the *dependent* child no longer meets the definition of an eligible covered *dependent*, unless the *dependent* elects to continue coverage at his or her

own expense. It is the responsibility of the *dependent* to notify the *program* within 60 days of the date coverage would have terminated and the *program* will notify the *dependent* within 14 days of his or her right to continue coverage.

2. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification and premium payment must be made within 45 days of the date the continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

3. Coverage for *children* under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

E. Dependents of COBRA Participants

1. If a covered terminated *employee* has elected to continue coverage and if during the period of continued coverage the covered spouse or a covered *dependent* child becomes ineligible for coverage due to:

- a. death of the *employee*;
- b. divorce from the *employee*; or
- c. a *dependent* child no longer meets the definition of an eligible covered *dependent*;

2. Then, the spouse and/or *dependent* child may elect to continue coverage at their own expense. Coverage will not be continued beyond 36 months from the date coverage would have terminated.

F. Dependents of Non-Participating Terminated Employee

1. If an *employee* no longer meets the definition of an *employee*, or a leave of absence has expired and the *employee* has not elected to continue coverage, the covered spouse and/or covered *dependent children* may elect to continue coverage at their own expense. The elected coverage will be subject to the notification and termination provisions.

2. In the event a *dependent* child, covered under the provisions of the preceding paragraph no longer meets the definition of an eligible covered *dependent*, he or she may elect to continue coverage at his or her own expense. Coverage cannot be continued beyond 36 months from the date coverage would have terminated.

G Miscellaneous Provisions. During the period of continuation, benefits will be identical to those provided to others enrolled in this *plan* under its standard eligibility provisions for *employee* and *retirees*.

H. Disability COBRA

1. If a covered *employee* or covered *dependent* is determined by social security or by the *program* staff (in the case of a person who is ineligible for social security *disability* due to insufficient "quarters" of employment), to have been totally disabled on the date the *covered person* became eligible for continued coverage or within the initial 18 months of coverage, coverage under this *plan* for the *covered person* who is totally disabled may be extended at his or her own expense up to a maximum of 29 months from

the date coverage would have terminated. To qualify the *covered person* must:

a. submit a copy of his or her social security *disability* determination to the *program* before the initial 18-month continued coverage period expires and within 60 days after the date of issuance of the social security determination; or

b. submit proof of total *disability* to the *program* before the initial 18-month continued coverage period expires.

2. For purposes of eligibility for continued coverage under this Section, total *disability* means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of 12 months. To meet this definition one must have a severe impairment which makes one unable to do his previous work or any other substantial gainful activity which exists in the national economy, based upon a person's residual functional capacity, age, education and work experience.

3. The staff and medical director of the *program* will make this determination of total *disability* based upon medical evidence, not conclusions, presented by the applicant's *physicians*, work history, and other relevant evidence presented by the applicant.

4. Coverage under this Section will continue until the earliest of the following:

a. 30 days after the month in which social security determines that the *covered person* is no longer disabled. (The *covered person* must report the determination to the *program* within 30 days after the date of issuance by social security);

b. 29 months from the date coverage would have terminated;

I. *Medicare COBRA*. If an *employee* becomes entitled to *Medicare* on or before the date the *employee's* eligibility for benefits under this *plan* terminates, the period of continued coverage available for the *employee's* covered *dependents* will be the earliest of the following:

1. failure to pay the applicable premium;
2. 36 months beyond the date coverage would have terminated;
3. entitlement to *Medicare*;
4. coverage under a *group health plan*, except when subject to a pre-existing condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§107. Change of Classification

A. Adding or Deleting *Dependents*. The *plan member* must notify the *program* whenever a *dependent* is added to, or deleted from, the *plan member's* coverage, regardless of whether the addition or deletion would result in a change in the class of coverage. Notice must be provided within 30 days of the addition or deletion.

B. Change in Coverage

1. When, by reason of a change in family status (e.g., marriage, birth of child), the class of coverage is subject to change, effective on the date of the event, if application for the change is made within 30 days of the date of the event.

2. When the addition of a *dependent* results in the class of coverage being changed, the additional premium will be charged for the entire month if the date of change occurs on or before the fourteenth day of the month. If the date of change occurs on or after the fifteenth day of the month, additional premium will not be charged until the first day of the following month.

C. Notification of Change. It is the responsibility of the *employee* to notify the *program* of any change in classification of coverage affecting the *employee's* contribution amount. Any such failure later determined will be corrected on the first day of the following month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§109. Contributions

A. The state of Louisiana may make a contribution toward the cost of the *plan*, as determined on an annual basis by the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

Chapter 2. Termination of Coverage

§201. Active Employee and Retired Employee Coverage

A. Subject to continuation of coverage and *COBRA* rules, all benefits of a *covered person* will terminate under this *plan* on the earliest of the following dates:

1. on the date the *program* terminates;
2. on the date the group or agency employing the covered *employee* terminates or withdraws from the *program*;
3. on the contribution due date if the group or agency fails to pay the required contribution for the covered *employee*;
4. on the contribution due date if the *covered person* fails to make any contribution which is required for the continuation of his coverage;
5. on the last day of the month of the covered *employee's* death;
6. on the last day of the month in which the covered *employee* ceases to be eligible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§203. Dependent Coverage Only

A. Subject to continuation of coverage and *COBRA* rules, *dependent coverage* will terminate under this *plan* on the earliest of the following dates:

1. on the last day of the month the *employee* ceases to be covered.
2. on the last day of the month in which the *dependent*, as defined in this *plan* ceases to be an eligible *dependent* of the covered *employee*;
3. for grandchildren for whom the *employee* does not have legal custody or has not adopted, on the date the child's parent ceases to be a covered *dependent* under this *plan* or the grandchild no longer meets the definition of *children*;

4. upon discontinuance of all *dependent coverage* under this *plan*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

Chapter 3. Medical Benefits

§301. Medical Benefits Apply when Eligible Expenses are Incurred by a Covered Person

A. Eligible Expenses. Eligible expenses are the charges incurred for the following items of service and supply when *medically necessary* for the *treatment* of disease, accident, illness, or injury. These charges are subject to the applicable *deductibles*, limits of the *fee schedule*, schedule of benefits, exclusions and other provisions of the *plan*. A charge is incurred on the date that the service or supply is performed or furnished. Eligible expenses are:

1. *hospital* care. The medical services and supplies furnished by a *hospital* or ambulatory surgical center. covered charges for *room and board* will be payable as shown in the schedule of benefits;
2. services of a *physician*;
3. routine nursing services, i.e., "floor nursing" services provided by nurses employed by the *hospital* are considered as part of the *room and board*;
4. anesthesia and its administration;
5. laboratory examinations and diagnostic X-rays;
6. nuclear medicine and electroshock therapy;
7. blood and blood plasma, blood derivatives and blood processing, when not replaced;
8. surgical and medical supplies billed for *treatment* received in a *hospital* or ambulatory surgical center, and other covered provider's surgical and medical supplies as listed below:
 - a. catheters Cexternal and internal;
 - b. cervical collar;
 - c. leg bags for urinal drainage;
 - d. ostomy supplies;
 - e. prosthetic socks;
 - f. prosthetic sheath;
 - g. sling (arm or wrist);
 - h. suction catheter for oral evacuation;
 - i. surgical shoe (following foot surgery only);
 - j. plaster casts;
 - k. splints;
 - l. surgical trays (for certain procedures);
9. services of licensed physical, occupational or speech therapist when prescribed by a *physician* and pre-approved through outpatient procedure certification;
10. intravenous injections, solutions, and eligible related intravenous supplies;
11. services rendered by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) for the *treatment* of accidental injuries to a *covered person's* sound natural teeth, if:
 - a. coverage was in effect with respect to the individual at the time of the accident;
 - b. *treatment* commences within 90 days from the date of the accident and is completed within two years from the date of the accident; and
 - c. coverage remains continuously in effect with respect to the *covered person* during the course of the

treatment; eligible expenses will be limited to the original estimated total cost of *treatment* as estimated at the time of initial *treatment*;

12. *durable medical equipment*, subject to the lifetime maximum payment limitation as listed in the schedule of benefits. The *program* will require written certification by the treating *physician* to substantiate the medical necessity for the equipment and the length of time it will be used;

13. initial prosthetic appliances. Subsequent prosthetic appliances are eligible only when acceptable certification is furnished to the *program* by the attending *physician*;

14. professional ambulance services, subject to the following provisions:

a. licensed professional ambulance service in a vehicle licensed for highway use to or from a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$350 less a \$50 copayment for transportation charges. Medical services and supplies will be considered separately;

b. licensed air ambulance service to a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$1,500 less a \$250 copayment. Medical services and supplies will be considered separately;

15. one pair of eyeglass lenses or contact lenses required as a result of bilateral cataract surgery performed while coverage was in force. Expenses incurred for the eyeglass frames will be limited to a maximum benefit of \$50.

16. the first two pairs of surgical pressure support hose. Additional surgical support hose may be considered an eligible expense at the rate of one pair per six-month period;

17. the first two ortho-mammary surgical brassieres. Additional ortho-mammary surgical brassieres may be considered an eligible expense at the rate of one per six-month period;

18. orthopedic shoes prescribed by a *physician* and completely custom built;

19. acupuncture when rendered by a medical doctor;

20. eligible expenses associated with an organ transplant procedure including expenses for patient screening, organ procurement, transportation of the organ, transportation of the patient and/or donor, surgery for the patient and donor and immunosuppressant drugs, if:

a. the transplantation must not be considered experimental or investigational by the American Medical Association;

b. the transplant surgery must be performed at a medical center, which has an approved transplant program as determined by *Medicare*;

c. the *plan* will not cover expenses for the transportation of surgeons or family members of either the patient or donor;

d. all benefits paid will be applied against the *lifetime maximum benefit* of the transplant recipient.

21. services of a physical therapist and occupational therapist licensed by the state in which the services are rendered when:

a. prescribed by a licensed medical doctor;

b. services require the skills of and performed by a licensed physical therapist or licensed occupational therapist;

c. restorative potential exists;

d. meets the standard for medical practice;

e. reasonable and necessary for the *treatment* of the disease, illness, accident, injury or postoperative condition;

f. approved through outpatient procedure certification.

22. cardiac *rehabilitation* when:

a. rendered at a medical facility under the supervision of a *physician*;

b. rendered in connection with a myocardial infarction, angioplasty with or without stenting, or cardiac bypass surgery;

c. completed within 6 months following the qualifying event;

NOTE: Charges incurred for dietary instruction, educational services, behavior modification literature, health club membership, exercise equipment, preventative programs and any other items excluded by the *plan* are not covered.

23. routine physical examinations and immunizations as follows:

a. *well-baby care* expenses subject to the annual *deductible* and co-payments:

i. newborn facility and professional charges;

ii. birth to age 1 office visits for scheduled immunizations and screening;

b. *well-child care* expenses subject to the annual *deductible* and co-payments:

i. age 1 to age 3 office visits per year for scheduled immunizations and screening;

ii. age 3 to age 16 office visit per year for scheduled immunizations and screening;

c. *well-adult care* expenses, subject to co-payment specified in the schedule of benefits, for routine physical examination by a physician and related laboratory and radiology charges:

i. age 16 until age 40 once during a 3-year period;

ii. age 40 until age 50 once during a 2-year period;

iii. age 50 and over once during a 1-year period;

24. not subject to the annual *deductible*:

a. one pap test for cervical cancer per *plan year*;

b. screening mammographic examinations performed according to the following schedule:

i. one baseline mammogram during the five-year period a person is 35-39 years of age;

ii. one mammogram every two *plan years* for any person who is 40-49 years of age or more frequently if recommended by a *physician*;

iii. one mammogram every 12 months for any person who is 50 years of age or older;

c. testing for detection of prostate cancer, including digital rectal examination and prostate-specific antigen testing, once every twelve months for men over the age of 50 years, and as *medically necessary* for men over the age of 40 years;

25. *outpatient surgical facility* fees as specified in the maximum payment schedule;

26. midwifery services performed by a certified midwife or a certified nurse midwife;

27. physician's assistants, perfusionists, and registered nurse assistants assisting in the operating room;

28. splint therapy for the *treatment* of temporomandibular joint dysfunction (TMJ), limited to a

lifetime benefit of \$600 for a splint and initial panorex x-ray only. Surgical *treatment* for TMJ will only be eligible following a demonstrated failure of splint therapy and upon approval by the *program*;

29. oxygen and oxygen equipment;

30. outpatient self-management training and education, including medical nutrition therapy, for the *treatment* of diabetes, when these services are provided by a licensed health care professional with demonstrated expertise in diabetes care and *treatment* who has completed an educational program required by the appropriate licensing board in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, and only as follows:

a. a one-time evaluation and training program for diabetes self management, conducted by the health care professional in compliance with National Standards for Diabetes Self Management Education Program as developed by the American Diabetes Association, upon certification by the health care professional that the *covered person* has successfully completed the *program*, such benefits not to exceed \$500;

b. additional diabetes self-management training required because of a significant change in the patient's symptoms or conditions, limited to benefits of \$100 per year and \$2,000 per lifetime;

c. services must be rendered at a facility with a diabetes educational program recognized by the American Diabetes Association.

31.a. testing of sleep disorders only when the tests are performed at either:

i. a sleep study facility accredited by the American Sleep Disorders Association or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or

ii. a sleep study facility located within a healthcare facility accredited by JCAHO;

b. no benefits are payable for surgical *treatment* of sleep disorders (including LAUP) except following demonstrated failure of non-surgical *treatment* and upon approval by the *program*;

32. mental health and/or substance abuse services only when obtained through the *program's* managed behavioral health care organization contractor as shown in the schedule of benefits. These services must be identified by a DSM IV diagnosis code.

B. Emergency Services - Subject to all applicable terms of the Plan, *emergency services* will be considered *eligible expenses* whether rendered by a *participating provider* or non-participating provider, as follows:

1. *Emergency services* provided to a *covered person* who is later determined not to have required *emergency services* will be considered *eligible expenses* except:

a. When the *covered person's* medical condition would not have led a prudent lay person, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to health, serious impairment to bodily functions, or serious dysfunction of any bodily organ, unless the *covered person* was referred for *emergency services* by a *participating provider* or by an agent of OGB; or

b. When there was material misrepresentation, fraud, omission, or clerical error.

2. If a *covered person* requires hospitalization at a non-participating provider medically necessary inpatient services rendered by the non-participating provider will be considered eligible expenses until the *covered person* can be transferred to a participating provider.

3. OGB must be notified of the *emergency services* within 48 hours following commencement of treatment or admission, or as soon as medical circumstances permit. See also §307.C (below) regarding the requirement for pre-admission certification (PAC) for emergency admissions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§303. Fee Schedule

A. The *fee schedule* sets the maximum fee that the *program* will allow for an eligible medical expense.

B. If the medical provider accepts an assignment of benefits, the *plan member* cannot be billed for amounts exceeding the *fee schedule*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§305. Automated Claims Adjusting

A. Auto audit is a software program that applies all claims against its medical logic program to identify improperly billed charges, and charges for which this *plan* provides no benefits. Any claim with diagnosis or procedure codes deemed inadequate or inappropriate will be automatically reduced or denied. Providers accepting assignment of benefits cannot bill the *plan member* for the reduced amounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§307. Utilization ReviewC Pre-Admission Certification, Continued Stay Review

A. Pre-admission certification (PAC) and continued stay review (CSR) establish the medical necessity and length of inpatient *hospital* confinement.

B. For a routine vaginal delivery, PAC is not required for a stay of 2 days or less. If the mother's stay exceeds or is expected to exceed 2 days, PAC is required within 24 hours after the delivery or the date on which any complications arose, whichever is applicable. If the baby's stay exceeds that of the mother, PAC is required within 72 hours of the mother's discharge and a separate pre-certification number must be obtained for the baby. In the case of a scheduled caesarean section, it is required that PAC be obtained prior to the day of admission.

C. No benefits will be paid under the *plan*:

1. unless PAC is requested at least 72 hours prior to the planned date of admission;

2. unless PAC is requested within 48 hours of admission, or as soon as medical circumstances, permit in the case of *emergency services*;

3. for *hospital* charges incurred during any confinement for which PAC was requested, but which was not certified as *medically necessary* by the *program's* utilization review contractor;

4. for *hospital* charges incurred during any confinement for any days in excess of the number of days certified through PAC or CSR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§309. Outpatient Procedure Certification (OPC)

A. OPC certifies that certain outpatient procedures and therapies are *medically necessary*.

B. OPC is required on the following procedures:

1. cataract;
2. laparoscopic cholecystectomy;
3. lithotripsy;
4. magnetic resonance imaging:
 - a. brain/head lower extremity;
 - b. upper extremity;
 - c. spine;
5. knee arthroscopy;
6. septoplasty;
7. therapies:
 - a. physical therapy;
 - b. speech therapy;
 - c. occupational therapy;
 - d. therapy with unlisted modality.

C. No benefits will be paid for the facility fee in connection with outpatient procedures, or the facility and professional fee in connection with outpatient therapies:

1. unless OPC is requested at least 72 hours prior to the planned date of procedure or therapy;

2. for charges incurred on any listed procedure for which OPC was requested but not certified as *medically necessary* by the *program's* utilization review contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§311. Case Management

A. Case management (CM) is the care management program available in cases of illness or injury where critical care is required and/or *treatment* of extended duration is anticipated.

B. Case management may provide coverage for services that are not normally covered. To be eligible, the condition being treated must be a covered condition, and Case management must be approved prior to the service being rendered.

C. These charges are subject to the *deductible*, co-insurance, *fee schedule* and maximum benefit limitations.

D. The following criteria must be met:

1. the *program* must be the primary carrier at the time case management is requested. Any case management plan will be contingent upon the *program* remaining the primary carrier;

2. the patient must not be confined in any type of nursing home setting at the time case management is requested;

3. there must be a projected savings to the *program* through case management; or a projection that case management expenses will not exceed normal *plan* benefits; and

a. the proposed *treatment* plan will enhance the patient's quality of life;

b. benefits will be utilized at a slower rate through the alternative *treatment* plan.

E. If approved, case management may provide any of the following:

1. alternative care in special *rehabilitation* facilities;
2. alternative care in a skilled nursing facility/unit or swing bed (not nursing home), or the patient's home, subject to the *deductible* and coinsurance;
3. avoidance of complications by earlier *hospital* discharge, alternative care and training of the patient and/or family;
4. home health care services limited to 150 visits per *plan* year;
5. hospice care:
 - a. not subject to the *deductible*;
 - b. benefits are always payable at 80 percent, never at 100 percent;
6. private duty nursing care;
7. total parenteral nutrition, provided that home visits for TPN are not reimbursable separately;
8. enteral nutrition up to a single 90-day period for instances where through surgery or neuromuscular mechanisms the patient cannot maintain nutrition and the condition can reasonably be expected to improve during this one 90-day timespan.

F. Mental health and substance abuse *treatments* or conditions are not eligible for case management.

G. Benefits are considered payable only upon the recommendation of the *program's* contractor, with the approval of the attending *physician*, patient or his representative, and the *program* or its representative. Approval is contingent upon the professional opinion of the *program's* medical director, consultant, or his designee as to the appropriateness of the recommended alternative care.

H. If a condition is likely to be lengthy or if care could be provided in a less costly setting, the *program's* contractor may recommend an alternative plan of care to the *physician* and patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§313. Dental Surgical Benefits

A. When excision of one or more impacted teeth is performed by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) while coverage is in force, the *program* will pay, without *deductible*, the eligible expense actually incurred for the surgical procedure.

B. Expenses incurred in connection with the removal of impacted teeth, including pre-operative and post-operative care are subject to the *deductible*, co-insurance and the maximum benefit provisions of the *plan*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§315. Medicare Reduction

A. If the patient has not chosen and paid a separate premium for the full coordination of benefits option, the charges will be reduced by whatever amounts are paid or payable by *Medicare*. The *program* requires written confirmation from the Social Security Administration or its successor if a person is not eligible for *Medicare* coverage. All provisions of this *plan*, including all limitations and exceptions, will be applied.

B. *Retiree 100-Medicare COB*. Upon enrollment and payment of the additional monthly premium, a *plan member* and his *dependents* may choose to have full coordination of benefits with *Medicare*. Enrollment must be made within 30 days of eligibility for *Medicare* or within 30 days of retirement if already eligible for *Medicare* and at the annual open enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§317. Exceptions and Exclusions for All Medical Benefits

A. No benefits are provided under this *plan* for:

1. cases covered, in whole or in part, by any worker's compensation program, regardless of whether the patient has filed a claim for benefits. This applies to compensation provided on an expense-incurred basis or blanket settlements for past and future losses;
2. convalescent, skilled nursing, sanitarium, or *custodial care* or *rest cure*;
3. expenses for elective, non-therapeutic voluntary abortion, although expenses for complications as a result are covered;
4. injuries sustained while in an aggressor role;
5. expenses incurred as a result of the patient's attempt at a felony or misdemeanor;
6. expenses incurred by a *covered person* in connection with cosmetic surgery, unless necessary for the immediate repair of a deformity caused by a disease and/or injury which occurs while coverage is in force. No payment will be made for expenses incurred in connection with the *treatment* of any body part not affected by the disease and/or injury;
7. expenses incurred for shoes and related items similar to wedges, cookies and arch supports;
8. any expense, except for actual out-of-pocket expenses, incurred by a member of a Health Maintenance Organization (HMO), Health Maintenance *Plan* (HMP) or other prepaid medical plan or medical services plan if the *covered person* is enrolled on a group (employer-sponsored) basis;
9. dental braces and orthodontic appliances (for whatever reason prescribed or utilized) and *treatment* of periodontal disease;
10. dentures, dental implants and any surgery for their use, except if needed as the result of an accident that meets the *program's* requirements;

11. medical services, *treatment* or prescription drugs provided without charge to the *covered person* or for which the *covered person* is not legally obligated to pay;

12. maternity expenses incurred by any person other than the *employee* or the *employee's* legal spouse;

13. personal convenience items including, but not limited to, admit kits, bedside kits, telephone and television, guest meals, beds, and similar items;

14. charges for services and supplies which are in excess of the maximum allowable under the medical *fee schedule*, *outpatient surgical facility fee schedule*, or any other limitations of the *plan*;

15. services and supplies which are not *medically necessary*;

16. services rendered for remedial reading and recreational, visual and behavioral modification therapy, *pain rehabilitation control and/or therapy*, and dietary or educational instruction for all illnesses, other than diabetes;

17. services and supplies in connection with or related to gender dysphoria or reverse sterilization;

18. artificial organ implants, penile implants, transplantation of other than homo sapiens (human) organs;

19. expenses subsequent to the initial diagnosis, for infertility and complications, including, but not limited to, services, drugs, and procedures or devices to achieve fertility; in-vitro fertilization, low tubal transfer, artificial insemination, intracytoplasmic sperm injection, embryo transfer, gamete transfer, zygote transfer, surrogate parenting, donor semen, donor eggs, and reversal of sterilization procedures;

20. air conditioners and/or filters, dehumidifiers, air purifiers, wigs or toupees, heating pads, cold devices, home enema equipment, rubber gloves, swimming pools, saunas, whirlpool baths, home pregnancy tests, lift chairs, devices or kits to stimulate the penis, exercise equipment, and any other items not normally considered medical supplies;

21. administrative fees, interest, penalties or sales tax;

22. marriage counseling and/or family relations counseling;

23. charges for services rendered over the telephone from a *physician* to a *covered person*;

24. radial keratotomy or any procedures for the correction of refractive errors;

25. speech therapy, except when ordered by a *physician* for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurological disease;

26. services and supplies related to obesity, surgery for excess fat in any area of the body, resection of excess skin or fat following weight loss or pregnancy;

27. hearing aids, or any examination to determine the fitting or necessity;

28. hair transplants;

29. routine physical examinations or immunizations not listed under eligible expenses;

30. diagnostic or *treatment* measures which are not recognized as generally accepted medical practice;

31. medical supplies not listed under eligible expenses;

32. *treatment* or services for mental health and substance abuse provided outside the *treatment* plan developed by the *program's* managed behavioral health care organization or by therapists with whom or at facilities with which the *program's* managed behavioral health care organization does not have a contract;

33. expenses for services rendered by a dentist or oral surgeon and any ancillary or related services, except for covered dental surgical procedures, dental procedures which fall under the guidelines of eligible dental accidents, procedures necessitated as a result of or secondary to cancer, or oral and maxillofacial surgeries which are shown to the satisfaction of the *program* to be *medically necessary*, non-dental, non-cosmetic procedures;

34. genetic testing, except when determined to be *medically necessary* during a covered pregnancy;

35. *treatment* for temporomandibular joint dysfunction (TMJ), except as listed under eligible expenses;

36. services of a private-duty registered nurse (R.N.) or of a private-duty licensed practical nurse (L.P.N.);

37. breast thermograms;

38. services rendered by any provider related to the patient by blood, adoption or marriage;

39. facility fees for services rendered in a *physician's* office or in any facility not approved by the federal Health Care Financing Administration for payment of such fees under *Medicare*;

40. glucometers;

41. services rendered by a non-participating provider, except *emergency services* as provided herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§319. Coordination of Benefits

A. Coordination of benefits is the order of payment when two or more plans are involved. When a patient is also covered by another plan, the plans will coordinate benefits.

B. Benefit *plan* is this *plan* or any one of the following:

1. group or employer sponsored *plan*;

2. group practice and other group prepayment *plan*;

3. other plans required or provided by law. This does not include Medicaid or any benefit plan that does not allow coordination.

C. Primary Plan and Secondary Plan

1. All benefits provided are subject to coordination of benefits.

2. Benefit *Plan* Payment Order

a. If an individual is covered by more than one plan, the order of *benefit payment* will follow guidelines established by the National Association of Insurance Commissioners, except for *Health Maintenance Organizations* or other types of employer-sponsored prepaid medical plans.

b. The plan that pays first will pay as if there were no other plan involved. The secondary and subsequent plans may pay the balance due up to 100 percent of the total allowable expense. No plan will pay benefits greater than it would have paid in the absence of coordination of benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§321. Managed Care Option

A. The *program* may implement Managed Care Option (MCO) arrangements or other agreements to discount payable fees. The *program* reserves to itself the right to negotiate the amount of the discount, the incentives to be offered to *plan members* and all other provisions which are a part of any discount fee arrangement. To be eligible, the *program* must be the primary carrier at the time services are rendered. The only exception would be on a *covered person* with only *Medicare* Part A, who did not also have *Medicare* Part B. The Part B charges would be eligible for MCO benefits.

1. If a *covered person* obtains medical services or *hospital* services from an eligible provider who has agreed to provide the services at a mutually agreed upon discount from the maximum medical *fee schedule* or at a per diem or discounted rate from a *hospital*, the *program* will pay after applicable co-pays, as specified in the schedule of benefits. There is a contractual assignment to all MCO participating providers.

2. Point of Service MCO Regions (Areas)

a. The following regions are used to determine whether there is an MCO participating provider in the same area as the point of service

Region 1 - Zip Codes 70000 through 70199
Region 2 - Zip Codes 70300 through 70399
Region 3 - Zip Codes 70400 through 70499
Region 4 - Zip Codes 70500 through 70599
Region 5 - Zip Codes 70600 through 70699
Region 6 - Zip Codes 70700 through 70899
Region 7 - Zip Codes 71300 through 71499
Region 8 - Zip Codes 71000 through 71199
Region 9 - Zip Codes 71200 through 71299

b. If a *non-participating* provider is used, then no benefits are payable except for emergency services as provided herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§323. Prescription Drug Benefits

A. This *plan* allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor requiring a prescription and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a *covered person* as an inpatient *hospital* patient or an outpatient *hospital* patient, including insulin, Retin-A dispensed for *covered persons* under the age of 26, vitamin B12 injections, prescription potassium chloride, and over-the-counter diabetic supplies, including, but not limited to, strips, lancets, and swabs. In addition, this *plan* allows benefits, not to exceed \$200 per month, for expenses incurred for the purchase of low protein food products for the *treatment* of inherited metabolic diseases if the low protein food products are *medically necessary* and are obtained from a source approved by the OGB. Such expenses shall be subject to coinsurance and co-payments

relating to prescription drug benefits. In connection with this benefit, the following words shall have the following meanings.

1. *Inherited Metabolic Disease*—a disease caused by an inherited abnormality of body chemistry and shall be limited to:

- a. phenylketonuria (PKU);
- b. maple syrup urine disease (MSUD);
- c. methylmalonic acidemia (MMA);
- d. isovaleric acidemia (IVA);
- e. propionic acidemia;
- f. glutaric acidemia;
- g. urea cycle defects;
- h. tyrosinemia.

2. *Low Protein Food Products*—a food product that is especially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary *treatment* of an inherited metabolic disease. Low protein food products shall not include a natural food that is naturally low in protein.

B. The following drugs, medicines, and related services are not covered:

1. appetite suppressant drugs;
2. dietary supplements;
3. topical forms of Minoxidil;
4. Retin-A dispensed for a *covered person* over age 26;
5. amphetamines dispensed for diagnoses other than Attention Deficit Disorder or Narcolepsy;
6. nicotine, gum, patches, or other products, services, or programs intended to assist an individual to reduce or cease smoking or other use of tobacco products;
7. nutritional or parenteral therapy;
8. vitamins and minerals;
9. drugs available over the counter; and
10. serostim dispensed for any diagnoses or therapeutic purposes other than AIDS wasting;
11. drugs for *treatment* of impotence, except following surgical removal of the prostate gland; and
12. glucometers.

C. Outpatient prescription drug benefits are adjudicated by a third-party Pharmacy Benefits Manager with whom the *program* has contracted. In addition to all provisions, exclusions and limitations relative to prescription drugs set forth elsewhere in this *plan of benefits*, the following apply to expenses incurred for outpatient prescription drugs.

1. The *eligible expense* for a prescription drug is limited to the allowable cost of the generic drug, if a generic is available, and to the allowable cost for brand drugs identified on the Pharmacy Benefits Manager's list of preferred drugs, if generic is not available.

2. Upon presentation of the *OGB* health benefits identification card at a *participating pharmacy*, the *plan member* is responsible for payment of 50 percent of eligible expense, up to \$50 per prescription dispensed, and 100 percent of excess cost (over and above the *eligible expense*) at the point of purchase. The *plan* will pay the balance of the *eligible expense* for prescription drugs dispensed at a *participating pharmacy*.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (below).

3. In the event the *plan member* does not present the *OGB* health benefits identification card to the *participating pharmacy* at the time of purchase, or prescription drugs are purchased from a non-participating pharmacy, the *plan member* will be responsible for full payment for the drug cost. No benefits are payable by the plan, and the *plan member's* payment will not be applied toward satisfaction of the annual out-of-pocket threshold (below).

4. There is a \$1200 per person per *plan year* out-of-pocket threshold for *eligible expenses* for prescription drugs. Once this threshold is reached, that is, the *plan member* has paid \$1,200 of *eligible expenses* for prescription drugs, the *plan member* will be responsible for a \$15 co-pay for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs, with no co-pay for generic drugs. The *plan* will pay the balance of the eligible expense for prescription drugs dispensed at a *participating pharmacy*.

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations.

a. Up to a 34-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill.

b. For refills dispensed within 120 days of the most recent fill, up to a 102-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-34 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$50 per prescription dispensed, and 100 percent of excess cost.

ii. For a supply of 35-64 days the *plan member* will be responsible for payment of fifty percent of the *eligible expense* for the drug, up to a maximum of \$100 per prescription dispensed, and 100 percent of excess cost.

iii. For a supply of 69-102 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$150 per prescription dispensed, and 100 percent of excess cost.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (above).

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs will be \$15 for a 1-34 days supply, \$30 for a 35-64 days supply, and \$45 for a 69-102 days supply, with no co-pay for up to a 102-days supply of generic drugs.

6. *Brand drug*—the trademark name of a drug approved by the U. S. Food and Drug Administration.

7. *Generic drug*—a chemically equivalent copy of a brand drug.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

Chapter 4. Uniform Provisions

§401. Statement of Contractual Agreement

A. This written *plan of benefits* as amended and any documents executed by or on behalf of the covered *employee* constitute the entire agreement between the parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§403. Properly Submitted Claim

A. For *plan reimbursements*, all bills must show:

1. employee's name;
2. name of patient;
3. name, address, and telephone number of the provider of care;
4. diagnosis;
5. type of services rendered, with diagnosis and/or procedure codes;
6. date of service;
7. charges;
8. *employee's* member number;
9. provider tax identification number;
10. *Medicare* explanation of benefits, if applicable.

B. The *program* can require additional documentation in order to determine the extent of coverage or the appropriate *reimbursement*. Failure to furnish the requested information will constitute reason for the denial of benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§405. When Claims must be Filed

A. A claim for benefits must be received by the *program* within one year from the date on which the medical expenses were incurred.

B. The receipt date for electronically filed claims is the date on which the *program* receives the claim, not the date on which the claims is submitted to a clearinghouse or to the providers practice management system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§407. Right to Receive and Release Information

A. The *program* may release to, or obtain from any company, organization, or person, without consent of or notice to any person, any information regarding any person which the *program* deems necessary to carry out the provisions of this *plan*, or like terms of any plan, or to determine how, or if, they apply. Any claimant under this *plan* must furnish to the *program* any information necessary to implement this provision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§409. Legal Limitations

A. A *plan member* must exhaust the administrative claims review procedure before filing a suit for benefits. No action shall be brought to recover benefits under this *plan*

more than one year after the time a claim is required to be filed or more than 30 days after mailing of the notice of decision of the administrative claims *committee*, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§411. Benefit Payment to other Group Health Plans

A. When payments, which should have been made under this *plan*, have been made by another *group health plan*, the *program* may pay to the other plan the sum proper to satisfy the terms of this *plan of benefits*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§413. Recovery of Overpayments

A. If an overpayment occurs, the *program* retains the right to recover the overpayment. The *covered person*, institution or provider receiving the overpayment must return the overpayment. At the *plan's* discretion, the overpayment may be deducted from future claims. Should legal action be required as a result of fraudulent statements or deliberate omissions on the application, the defendant will be responsible for attorney fees of 25 percent of the overpayment or \$1,000 whichever is greater. The defendant will also be responsible for court costs and legal interest from date of judicial demand until paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§415. Third Party Recovery Provision

A. Right of *Subrogation and Reimbursement*. When this provision applies, the *covered person* may incur medical or dental charges due to injuries which may be caused by the act or omission of a third party or a third party may be responsible for payment. In such circumstances, the *covered person* may have a claim against the third party, or insurer, for payment of the medical or dental charges. Accepting benefits under this *plan* for those incurred medical or dental expenses automatically assigns to the *program* any rights the *covered person* may have to recover payments from any third party or insurer. This right allows the *program* to pursue any claim which the *covered person* has against any third party, or insurer, whether or not the *covered person* chooses to pursue that claim. The *program* may make a claim directly against the third party or insurer, but in any event, the *program* has a lien on any amount recovered by the *covered person* whether or not designated as payment for medical expenses. This lien will remain in effect until the *program* is repaid in full. The *program* reserves the right to recover either from the liable third party or the *covered person*. The *covered person*:

1. automatically assigns to the *program* his or her rights against any third party or insurer when this provision applies;
2. must notify the *program* of a pending third-party claim; and

3. must repay to the *program* the benefits paid on his or her behalf out of the *recovery* made from the third party or insurer.

B. Amount Subject to *Subrogation* or *Reimbursement*

1. The *covered person* agrees to recognize the *program's* right to *subrogation* and *reimbursement*. These rights provide the *program* with a priority over any funds paid by a third party to a *covered person* relative to the injury or sickness, including a priority over any claim for non-medical or dental charges, attorney fees, or other costs and expenses.

2. Notwithstanding its priority to funds, the *program's* *subrogation* and *reimbursement* rights, as well as the rights assigned to it, are limited to the extent to which the *program* has made, or will make, payments for medical or dental charges as well as any costs and fees associated with the enforcement of its rights under the *program*.

3. When a right of *recovery* exists, the *covered person* will cooperate and provide requested information as well as doing whatever else is needed to secure the *program's* right of *subrogation* and *reimbursement* as a condition to having the *program* make payments. In addition, the *covered person* will do nothing to prejudice the right of the *program* to subrogate or seek *reimbursement*.

4. This right of refund also applies when a *covered person* recovers under an uninsured or underinsured motorist plan, homeowner's plan, renter's plan, medical malpractice plan, worker's compensation plan or any liability plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§417. Employer Responsibility

A. It is the responsibility of the Participant Employer to submit enrollment and change forms and all other necessary documentation on behalf of its employees to OGB. Employees of a *participant employer* will not by virtue of furnishing any documentation to OGB on behalf of a *plan member*, be considered agents of OGB, and no representation made by any such person at any time will change the provisions of this Plan.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the Re-employed Retiree category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a covered employee. If not timely forwarded to OGB, then OGB will assume responsibility only for Covered medical benefits due to Medicare, for a covered employee pursuant to this *plan of benefits*. The participant employer will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§419. Program Responsibility

A. The *program* will administer the *plan* in accordance with the terms of the *plan of benefits*, state and federal law, and its established policies, interpretations, practices, and procedures. It is the express intent of this *program* that the *board of trustees* will have maximum legal discretionary authority to construe and interpret the terms and provisions of the *plan*, to make determinations regarding issues which relate to eligibility for benefits, to decide disputes which may arise relative to *covered person's* rights, and to decide questions of *plan of benefits* interpretation and those of fact relating to the *plan of benefits*. The decisions of the *board of trustees* or its *committees* will be final and binding on all interested parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§421. Reinstatement to Position following Civil Service Appeal

A. Indemnity Plan Participants. When coverage of a terminated *employee* who was a participant in the health indemnity plan is reinstated by reason of a civil service *appeal*, coverage will be reinstated to the same level in the health indemnity plan retroactive to the date coverage terminated. The *employee* and *participant employer* are responsible for the payment of all premiums for the period of time from the date of termination to the date of the final order reinstating the *employee* to his position. The *program* is responsible for the payment of all eligible benefits for charges incurred during this period. All claims for expenses incurred during this period must be filed with the *program* within 60 days following the date of the final order of reinstatement.

B. *Health Maintenance Organization* (HMO) Participants. When coverage of a terminated *employee* who was a participant in an HMO is reinstated by reason of Civil Service *appeal*, coverage will be reinstated in the HMO in which the *employee* was participating effective on the date of the final order of reinstatement. There will be no retroactive reinstatement of coverage and no premiums will be owed for the period during which coverage with the HMO was not effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§423. Plan of Benefits and/or Contract Amendments or Termination

A. The *program* has the statutory responsibility of providing health and accident and death benefits for *covered persons* to the extent that funds are available. The *program* reserves to itself the right to terminate or amend the eligibility and benefit provisions of its *plan of benefits* from time to time as it may deem necessary to prudently discharge its duties. Termination or modifications will be promulgated subject to the applicable provisions of law, and nothing

contained herein shall be construed to guarantee or vest benefits for any participant, whether active or retired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

Chapter 5. Claims Review and Appeal

§501. Administrative Review

NOTE: This Section establishes and explains the procedures for review of benefit and eligibility decisions by the *program*.

A. Administrative Claims Review

1. The *covered person* may request a review of any claim for benefits or eligibility. The written request must include the name of the *covered person*, member number, the name of the patient, the name of the provider, dates of service and should clearly state the reasons for the *appeal*.

2. The request for review must be submitted within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review organization or prescription benefits manager

B. Review and Appeal Prerequisite to Legal Action

1. The *covered person* must exhaust the administrative claims review procedure before filing a suit for benefits. Unless a request for review is made, the initial determination becomes final, and no legal action may be brought to attempt to establish eligibility or to recover benefits allegedly payable under the *program*.

C. Administrative Claims Committee

1. An administrative claims *committee* (the *committee*) will consider all such requests for review and to ascertain whether the initial determination was made in accordance with the *plan of benefits*.

D. Administrative Claims Review Procedure and Decisions

1. Review by the *committee* shall be based upon a documentary record which includes:

- a. all information in the possession of the *program* relevant to the issue presented for review;
- b. all information submitted by the *covered person* in connection with the request for review; and
- c. any and all other information obtained by the *committee* in the course of its review.

2. Upon completion of the review the *committee* will render its decision which will be based on the *plan of benefits* and the information included in the record. The decision will contain a statement of reasons for the decision. A copy of the decision will be mailed to the *covered person* and any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§503. Appeals from Medical Necessity Determinations

NOTE: The following provisions will govern appeals from adverse determinations based upon medical necessity by OGB's Utilization Review Organization (URO) pursuant to Article 3, Section IV of this document.

A. First Level Appeal. Within 60 days following the date of an adverse initial determination based upon medical necessity, the *covered person*, or the provider acting on behalf of the *covered person*, may request a first level *appeal*.

1. Each such *appeal* will be reviewed within the URO by a health care professional who has appropriate expertise.

2. The URO will provide written notice of its decision.

B. Second level review. Within 30-days following the date of the notice of an adverse decision on a first level *appeal*, a *covered person* may request a second level review.

1. Each such second level review will be considered by a panel within the URO that includes health care professionals who have appropriate expertise and will be evaluated by a clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed.

a. The review panel will schedule and hold a review meeting, and written notice of the time and place of the review meeting will be given to the *covered person* at least fifteen working days in advance.

b. The covered person may:

- i. present his/her case to the review panel;
- ii. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting; and
- iii. ask questions of any representative of the URO.

c. If face-to-face meeting is not practical the *covered person* and provider may communicate with the review panel by conference call or other appropriate technology.

2. The URO will provide written notice of its decision on the second level review.

C. External Review. Within 60 days after receipt of notice of a second level *appeal* adverse determination, the *covered person* whose medical care was the subject of such determination, with the concurrence of the treating health care provider, may submit request for an external review to the URO.

1. The URO will provide the documents and any information used in making the second level *appeal* adverse determination to its designated independent review organization.

2. The independent review organization will review all information and documents received and any other information submitted in writing by the *covered person* or the *covered person's* health care provider.

3. The independent review organization will provide notice of its recommendation to the URO, the *covered person*, and the *covered person's* health care provider.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

D. Expedited Appeals

1. An expedited *appeal* may be initiated by the *covered person*, with the consent of the treating health care professional, or the provider acting on behalf of the *covered person*, with regard to:

a. an adverse determination involving a situation where the time frame of the standard *appeal* would seriously jeopardize the life or health of a *covered person* or would jeopardize the *covered person's* ability to regain maximum function; or

b. any request concerning an admission, availability of care, continued stay, or health care service for a *covered*

person who has received emergency services but has not been discharged from a facility.

2. In an expedited *appeal* the URO will make a decision and notify the *covered person*, or the provider acting on behalf of the *covered person*, as expeditiously as the *covered person's* medical condition requires, but in no event more than seventy-two hours after the *appeal* is commenced.

3. The URO will provide written confirmation of its decision concerning an expedited *appeal* if the initial notification is not in writing.

4. In any case where the expedited *appeal* does not resolve a difference of opinion between the URO and the *covered person*, or the provider acting on behalf of the *covered person*, such provider may request a second level review of the adverse determination.

E. Expedited External Review of Urgent Care Requests

1. When the *covered person* receives an adverse determination involving an emergency medical condition of the *covered person* being treated in the emergency room, during *hospital* observation, or as a *hospital* inpatient, the *covered person's* health care provider may request an expedited external review.

2. The URO will transmit all documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or other available expeditious method.

3. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization will notify the *covered person*, the URO, and the *covered person's* health care provider of its decision to uphold or reverse the adverse determination.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

Chapter 6. Definitions

§601. Definitions

AppealC a request for and a formal review by a *plan member* of a medical claim for benefits or an eligibility determination.

Benefit PaymentC payment of eligible expenses incurred by a *covered person* during a *plan year* at the rate shown under percentage payable in the schedule of benefits.

CEOC the Chief Executive Officer of the *program*.

Children

1. any natural or legally adopted *children* of the *employee* and/or the *employee's* legal spouse dependent upon the *employee* for support;

2. any *children* in the process of being adopted by the *employee* through an agency adoption who are living in the household of the *employee* and who are or will be included as a *dependent* of the *employee's* federal income tax return for the current or next tax year (if filing is required);

3. other *children* for whom the *employee* has legal custody, who live in the household of the *employee*, and who are or will be included as a *dependent* on the *employee's*

federal income tax return for the current or next tax year (if filing is required);

4. grandchildren for whom the *employee* does not have legal custody, who are dependent upon the *employee* for support, and one of whose parents is a covered *dependent*. If the *employee* seeking to cover a grandchild is a paternal grandparent, the *program* will require that the biological father, i.e. the covered son of the *plan member*, execute an acknowledgement of paternity.

NOTE: If *dependent* parent becomes ineligible, the grandchild becomes ineligible for coverage, unless the *employee* has legal custody of the grandchild.

COBRAC federal continuation of coverage laws originally enacted in the Consolidated Omnibus Budget Reconciliation Act of 1985 with amendments.

CommitteeC the grievance *committee* of the board.

Covered PersonC an active or retired *employee*, or his eligible *dependent*, or any other individual eligible for coverage for whom the necessary application forms have been completed and for whom the required contribution is being made.

Custodial CareC care designed essentially to assist an individual to meet his activities of daily living (i.e. services which constitute personal care such as help in walking, getting in and out of bed, assisting in bathing, dressing, feeding, using the toilet and care which does not require admission to the *hospital* or other institution for the *treatment* of a disease, illness, accident or injury, or for the performance of surgery; or, care primarily to provide *room and board* with or without routine nursing care, training in personal hygiene and other forms of self-care) and supervisory care by a doctor for a person who is mentally or physically incapacitated and who is not under specific medical, surgical or psychiatric *treatment* to reduce the incapacity to the extent necessary to enable the patient to live outside an institution providing medical care, or when, despite *treatment*, there is not reasonable likelihood that the incapacity will be so reduced.

Date AcquiredC the date a *dependent* of a covered *employee* is acquired in the following instance and on the following dates only:

1. legal spouse-date of marriage;

2. children

a. natural *children*-the date of birth;

b. *children* in the process of being adopted:

i. agency adoption-the date the adoption contract was executed by the *employee* and the adoption agency;

ii. private adoption-the date of the execution of the act of voluntary surrender in favor of the *employee*, if the *program* is furnished with certification by the appropriate clerk of court setting forth the date of execution of the act and the date that said act became irrevocable, or the date of the first court order granting legal custody, whichever occurs first;

c. other *children* living in the household of the covered *employee* who are or will be included as a *dependent* on the *employee's* federal income tax return-the date of the court order granting legal custody.

d. grandchildren for whom the *employee* does not have legal custody, who are dependent upon the *employee* for support, and one of whose parents is a covered *dependent* as defined:

i. the date of birth, if all the requirements are met at the time of birth; or

ii. the date on which the coverage becomes effective for the covered *dependent*, if all the requirements are not met at the time of birth.

Deductible Cthe amount of covered charges for which no benefits will be paid. Before benefits can be paid in a *plan year*, a *covered person* must meet the *deductible* shown in the schedule of benefits.

Dependent Cany of the following persons who are enrolled for coverage as *dependents*, if they are not also covered as an *employee*:

1. the covered *employee's* legal spouse;
2. any (never married) *children* from date of birth (must be added to coverage within 30 days from *date acquired* by completing appropriate enrollment documents) up to 21 years of age, dependent upon the *employee* for support;
3. any unmarried (never married) *children* 21 years of age, but under 24 years of age, who are enrolled and attending classes as full-time students and who depend upon the *employee* for support. The term full-time student means students who are enrolled at an accredited college or university, or at a vocational, technical, or vocational-technical or trade school or institute, or secondary school, for the number of hours or courses which is considered to be full-time attendance by the institution the student is attending;

NOTE: It is the responsibility of the *plan member* to furnish proof acceptable to the *program* documenting the full-time student status of a *dependent* child for each semester.

4. any *dependent* parent of an *employee* or of an *employee's* legal spouse, if living in the same household, was enrolled prior to July 1, 1984, and who is, or will be, claimed as a *dependent* on the *employee's* federal income tax return in the current tax year. The *program* will require an affidavit stating the covered *employee* intends to include the parent as a *dependent* on his federal income tax return for the current tax year. Continuation of coverage will be contingent upon the payment of a separate premium for this coverage.

Dependent Coverage Cbenefits with respect to the *employee's dependents* only.

Disability Cthat the *covered person*, if an *employee*, is prevented, solely because of a disease, illness, accident or injury from engaging in his regular or customary occupation and is performing no work of any kind for compensation or profit; or, if a *dependent*, is prevented solely because of a disease, illness, accident or injury, from engaging in substantially all the normal activities of a person of like age in good health.

Durable Medical Equipment Cequipment which:

1. can withstand repeated use;
2. is primarily and customarily used to serve a medical purpose;
3. generally is not useful to a person in the absence of a illness or injury; and
4. is appropriate for use in the home. *Durable medical equipment* includes, but is not limited to, such items as wheelchairs, *hospital* beds, respirators, braces (non-dental) and other items that the *program* may determine to be *durable medical equipment*.

Emergency Ca medical condition of recent onset and severity which would lead a prudent lay person, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the health of a Covered Person (or unborn child if the Covered Person is a pregnant woman), serious impairment to bodily functions, or serious dysfunction of any bodily organ.

Emergency Services Cthose services medically necessary to screen, evaluate, and treat an Emergency.

Employee Ca full-time *employee* as defined by a *participant employer* in accordance with state law. No person appointed on a *temporary appointment* will be considered an *employee*.

Employee Coverage Cbenefits with respect to the *employee* only.

Family Unit Limit Cthe dollar amount shown in the schedule of benefits has been incurred by three members of a family unit toward their *plan year deductibles*. The *deductibles* of all additional members of that family unit will be considered satisfied for that year.

Fee Schedule COGB's schedule of maximum allowable charges for professional or *hospital* services.

Future Medical Recovery Cfrom another plan of expenses contemplated to be necessary to complete medical *treatment* of the *covered person*.

Group Health Plan Ca *plan* (including a self-insured *plan*) of, or contributed to by, an employer (including a self-employed person) or *employee* organization to provide health care (directly or otherwise) to the *employees*, former *employees*, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

Health Insurance Coverage Cbenefits consisting of medical care (provided directly, through insurance or *reimbursement*, or otherwise) under any *hospital* or medical service policy or certificate, *hospital* or medical service plan contract, or HMO contract offered by a health insurance issuer. However, benefits described pursuant to the Health Insurance Portability and Accountability Act are not treated as benefits consisting of medical care.

Health Maintenance Organization (HMO) Cany legal entity, which has received a certificate of authority from the Louisiana Commissioner of Insurance to operate as a *health maintenance organization* in Louisiana.

HIPAA Cthe Health Insurance Portability and Accountability Act of 1996 (USA Public Law 104-191) and regulations promulgated pursuant thereto.

Hospital Can institution, which meets all the following requirements:

1. is currently a licensed as a *hospital* by the state in which services are rendered and is not primarily an institution for rest, the aged, the *treatment* of pulmonary tuberculosis, a nursing home, extended care facility or remedial training institution, or facilities primarily for the *treatment* of conduct and behavior disorders.

Incurred Date Cthe date upon which a particular service or supply is rendered or obtained. When a single charge is made for a series of services, each service will bear a prorated share of the charge.

Inpatient ConfinementCa hospital stay, which is equal to or exceeds 24 hours.

Lifetime Maximum Benefitthe total amount of benefits that will be paid under the *plan* for all eligible expenses incurred by a *covered person*.

Medically NecessaryCa service or *treatment* which, in the judgement of the *program*:

1. is appropriate and consistent with the diagnosis and which, in accordance with accepted medical standards, could not have been omitted without adversely affecting the patient's condition or the quality of medical care rendered; and

2. is not primarily *custodial care*.

Medicarethe health insurance available through *Medicare* laws enacted by the Congress of the United States.

Occupational Therapythe application of any activity in which one engages for the purposes of evaluation, interpretation, *treatment* planning, and *treatment* of problems interfering with functional performance in persons impaired by physical illness or injury in order to significantly improve functioning.

Office of Group Benefits (OGB)-the agency of the State of Louisiana, within the Office of the Governor, Division of Administration, established by R.S. 42:801 and vested with the general administration of all aspects of programs of benefits as authorized or provided for under the provisions of Chapter 12 of Title 42 of the Louisiana Revised Statutes.

Outpatient Surgical FacilityCan ambulatory surgical facility licensed by the state in which the services are rendered.

Pain Rehabilitation Control and/or TherapyAny program designed to develop the individual's ability to control or tolerate chronic pain.

Participant EmployerCa state entity, school board or a state political subdivision authorized by law to participate in the *program*.

Participating PharmacyCa pharmacy that participates in a network established and maintained by the Pharmacy Benefits Management firm with which the *program* has contracted to provide and administer outpatient prescription drug benefits.

Participating Provider or MCO Participating ProviderCa physician, hospital, or other health care provider that participates in the network established and maintained by *OGB* (or a firm with which *OGB* has contracted) to provide health care services to participant in this *plan*.

Physical Therapythe evaluation of physical status as related to functional abilities and *treatment* procedures as indicated by that evaluation.

PhysicianC

1. **Physician** means the following persons, licensed to practice their respective professional skills by reason of statutory authority:

- a. doctor of medicine (M.D.);
- b. doctor of dental surgery (D.D.S.);
- c. doctor of dental medicine (D.M.D.);
- d. doctor of osteopathy (D.O.);
- e. doctor of podiatric medicine (D.P.M.);
- f. doctor of chiropractic (D.C.);
- g. doctor of optometry (O.D.);

h. psychologist meeting the requirements of the National Register of Health Service Providers in Psychology;

i. board certified social workers who are a members of an approved clinical social work registry or employed by the United States, the State of Louisiana, or a Louisiana parish or municipality, if performing professional services as a part of the duties for which he is employed;

j. mental health counselors who are licensed by the state in which they practice;

k. substance abuse counselors who are licensed by the state in which they practice.

2. The term *physician* does not include social workers, who are not board certified; interns; residents; or fellows enrolled in a residency training program regardless of any other title by which he is designated or his position on the medical staff of a *hospital*. A senior resident, for example, who is referred to as an assistant attending surgeon or an associate *physician*, is considered a resident since the senior year of the residency is essential to completion of the training program. Charges made by a *physician*, who is on the faculty of a state medical school, or on the staff of a state *hospital*, will be considered a covered expense if the charges are made in connection with the *treatment* of a disease, illness, accident or injury covered under this *plan*, and if the *physician* would have charged a fee for the services in the absence of this provision.

3. It is the specific intent and purpose of the *program* to exclude *reimbursement* to the *covered person* for services rendered by social workers who are not board certified; and intern, resident, or fellow enrolled in a residency training program regardless of whether the intern, resident, or fellow was under supervision of a *physician* or regardless of the circumstances under which services were rendered.

4. The term *physician* does not include a practicing medical doctor in the capacity of supervising interns, residents, senior residents, or fellows enrolled in a training program, who does not personally perform a surgical procedure or provide medical *treatment* to the *covered person*.

PlanCcoverage under this contract including and comprehensive medical benefits, prescription drug benefits, and mental health and substance abuse benefits.

Plan MemberCa covered person other than a dependent.

Plan YearCthat period commencing at 12:01 a.m., July 1, standard time, at the address of the *employee*, or the date the *covered person* first becomes covered under the *plan* and continuing until 12:01 a.m., standard time, at the address of the *employee* on the next following July 1. Each successive *plan year* will be the period from 12:01 a.m., July 1, standard time, at the address of the *employee* to 12:01 a.m., the next following July 1.

Programthe *Program* of employee benefits authorized by Chapter 12 of Title 42 of the Louisiana Revised Statutes and administered by the *Office of Group Benefits (OGB)*.

RecoveryCmonies paid to the *covered person* by way of judgment, settlement, or otherwise to compensate for all losses caused by the injuries or sickness whether or not said losses reflect medical or dental charges covered by the *program*.

RefereeCa hearing officer, employed or contracted by OGB, to whom an *appeal* may be referred for hearing.

Rehabilitation and Rehabilitation TherapyCcare concerned with the management of patients with impairments of function due to disease, illness, accident or injury.

ReimbursementCrepayment to the *program* for medical or dental benefits that it has paid toward care and *treatment* of the injury or sickness.

Rest CureCcare provided in a sanitarium, nursing home or other facility and designed to provide *custodial care* and provide for the mental and physical well being of an individual.

RetireeCan individual who was a covered *employee*, immediately prior to the date of retirement and who, upon retirement:

1. immediately received retirement benefits from an approved state or governmental agency defined benefit plan; or

2. was not eligible for participation in such a plan or had legally opted to not participate in such a plan; and

a. began employment prior to September 15, 1979, has 10 years of continuous state service and has reached the age of 65; or

b. began employment after September 16, 1979, has 10 years of continuous state service and has reached the age of 70; or

c. was employed after July 8, 1992, has 10 years of continuous state service, has a credit for a minimum of 40 quarters in the Social Security system at the time of employment and has reached the age of 65; or

d. maintained continuous coverage with the program as an eligible *dependent* until he/she became eligible as a former state *employee* to receive a retirement benefit from an approved state governmental agency defined benefit plan; or

3. immediately received retirement benefits from a state-approved or state governmental agency-approved defined contribution plan and has accumulated the total number of years of creditable service which would have entitled him to receive a retirement allowance from the defined benefit plan of the retirement system for which the *employee* would have otherwise been eligible. The appropriate state governmental agency or retirement system responsible for administration of the defined contribution plan is responsible for certification of eligibility to the State Employees Group Benefits Program;

4. *retiree* also means an individual who was a covered *employee* who continued the coverage through the provisions of *COBRA* immediately prior to the date of retirement and who, upon retirement, qualified for any of items 1, 2, or 3, above.

Room and BoardCall *hospital* expenses necessary to maintain and sustain a *covered person* during a confinement, including but not limited to, facility charges for the maintenance of the *covered person's hospital* room, dietary and food services, nursing services performed by nurses employed by or under contract with the *hospital* and housekeeping services.

Stop Loss ProvisionCrepresents the co-insurance amount for which the *plan member* is responsible. This amount does not include any *deductibles* or ineligible expenses. The *plan*

member's stop loss will be the difference between the *program's* payment and the eligible charge.

SubrogationCthe *program's* right to pursue the *covered person's* claims for medical or dental charges against a liability insurer, a responsible party or the *covered person*.

Temporary AppointmentCan appointment to any position for a period of 120 consecutive calendar days or less.

TreatmentCincludes consultations, examinations, diagnoses, and as well as medical services rendered in the care of a *covered person*.

Well-Adult CareCa routine physical examination by a *physician* that may include an influenza vaccination, lab work and x-rays performed as part of the exam in that *physician's* office, and billed by that *physician* with wellness procedure and diagnosis codes. All other health services coded with wellness procedures and diagnosis codes are excluded.

Well-Baby CareCroutine care to a well newborn infant from the date of birth until age 1. This includes routine physical examinations, active immunizations, check-ups, and office visits to a *physician* and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness.

Well-Child CareCroutine physical examinations, active immunizations, check-ups and office visits to a *physician*, and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness, from age 1 to age 16.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

Chapter 7. Schedule of Benefits MCO §701. Comprehensive Medical Benefits

A. Eligible expenses for professional, technical, and facility services, prescription drugs, equipment, and supplies are reimbursed on the basis of a schedule of maximum allowable charges. In addition all eligible expenses are determined in accordance with plan limitations and exclusions.

1. No Lifetime Maximum Limitation on Benefits (except for Outpatient Prescription Drug Benefits and Durable Medical Equipment, below)

2. Member Co-payments

a. Inpatient Hospital Services	\$100 per day, maximum \$300 per admission
b. Hospital Emergency Room	\$100 (waived if admitted)
c. Outpatient Services (per visit/encounter)	
d. Physician services	\$15 Primary Care Physician \$25 Specialist1
e. Ambulatory Surgical Facility	\$100
f. Physical /Occupational Therapy2	\$ 15
g. Speech Therapy2	\$ 15
h. MRI/CAT SCAN2	\$ 50
i. Sonograms	\$ 25
j. Cardiac Rehabilitation (6-month limit)	\$ 15
k. Pre-Natal And Postpartum Maternity (one-time co-payment to include Physician delivery charge, all pre-natal, one postpartum visit)	\$ 90

l. Well Care Services	\$15
m. Home Health ² (Limit 150 visits per Plan year)	\$ 15 per visit

¹Primary Care Physicians are limited to General Practice, Internal Medicine, Family Practice, Ob-Gyn, and Pediatrics.
²Prior authorization required.

3. Percentage Payable by the Plan after Co -Payments

a. Eligible expenses incurred for services of a participating MCO provider	100%
b. Eligible expenses incurred at a non-participating provider, except for emergencies as provided herein	0%
c. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%

B. Pharmacy Benefits^CPrescription Drugs

1. Lifetime Maximum for all Outpatient Prescription Drug Benefits, per person^C\$250,000

2. Participating Pharmacy^CMember pays 50 percent of eligible expense and 100 percent of excess cost at the point of purchase.

NOTE: Excess payments do not count toward the out of pocket threshold (below).

a. Eligible expense is limited generic drug cost, if generic is available, and to drugs identified on the Pharmacy Benefits Manager's list of preferred drugs, if generic is not available.

b. Maximum co-payment for Eligible expenses – \$50 per prescription dispensed.

c. No maximum co-payment for excess costs.

d. Out-of-pocket threshold^C\$1,200 per person, per Plan Year (for eligible expenses ONLY). Co-pay after threshold is reached:

i. Brand^C\$15,

ii. Generic^Cno co-pay

e. Plan pays balance of Eligible Expense.

3. Non-participating Pharmacy^CMember pays 100%, no credit toward out-of-pocket threshold.

C. Durable Medical Equipment

1. Lifetime Maximum Benefit for Durable Medical Expenses, per person^C\$50,000

2. Plan pays 80% of eligible expense.

D. Well Care Services

1. Well Baby Care (Birth to age 1)^COffice visits for scheduled immunizations and screenings

2. Well Child Care

a. Age 1-2^Cthree (3) office visits per year for scheduled immunizations and screenings

b. Age 3-15^Cone (1) office visit per year for scheduled immunizations and screenings

3. Well Adult Care^Coutine physical examination and associated laboratory and radiology

a. Age 16-39^Conce during a 3-year period

b. Age 40-49^Conce during a 2-year period

c. Age 50 and over^Conce during a 1-year period

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

§703. Mental Health And Substance Abuse

(Prior Authorization Required for all Services.)

A. Member Co -Payments

1. Inpatient Hospital Services	\$100 per day, maximum \$300 per admission
2. Outpatient Services	\$25 per visit

B. Benefits Limitations

1. Inpatient Hospital Services	Maximum of 45 inpatient days per person, per calendar year
2. Outpatient Services	Maximum of 52 outpatient visits per person, per Calendar Year, inclusive of the intensive outpatient program

NOTE: Two days of partial hospitalization or two days of residential treatment center hospitalization may be traded for each inpatient day of treatment that is available under the 45-day Calendar Year maximum for inpatient treatment. A residential treatment center is a 24-hour mental health or substance abuse, non-acute care treatment setting for active treatment interventions directed at the amelioration of the specific impairments that led to admission. Partial hospitalization is a level of care where the patient remains in the hospital less than 24 hours. Expenses incurred for emergency services will only be reimbursed if, after review, the services are determined to be a life-threatening psychiatric emergency resulting in an authorized mental health or substance abuse admission within 24 hours to an inpatient, partial, or intensive outpatient level care. Non-emergent psychiatric or substance abuse problems treated in the emergency room will not be eligible for reimbursement.

C. Percentage Payable by the Plan after Co -payments

1. Eligible expenses incurred for services of a participating MCO provider	100%
2. Eligible expenses incurred at a non-participating provider, except for emergencies as defined herein	0%
3. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, La 70804, until 4:30 p.m. on Wednesday, April 30, 2003.

A. Kip Wall
 Chief Executive Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Managed Care Option (MCO) Plan of Benefits

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

It is estimated by OGB's consulting actuary, Milliman, USA, that the addition of the Managed Care Option (MCO) will result in a cost avoidance to the State of Louisiana and Office of Group Benefits of avoidance to the State of Louisiana and Office of Group Benefits of approximately \$6.5 million for Fiscal Year 2003/22004. If overall medical inflation continues at 15 percent for the next several years, the cost avoidance for Fiscal Year 2004/2005 will be \$7.5 million and the cost avoidance for Fiscal Year 2005/2006 will be \$8.6 million. It is

anticipated that \$3,000 in printing costs will be incurred with the publishing of this rule.

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

Revenue collections of state and local governmental units will not be affected. This benefit option is being added to give members participating in the Office of Group benefits an additional health care option.

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

This rule allows the Office of Group Benefits to add an additional benefit option, the Managed Care Option (MCO). The MCO will give employees another health care option in addition to the PPO, EPO, and an HMO. Those members that choose (it is anticipated approximately 5,000 employees/retirees will choose this option) to select this option will pay a lower premium than if they enroll in any of the other health care options. They will have benefits that are very close to that of an HMO member, but will be subject to a strict formulary for Prescription Drugs and there will be no our of network benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment should not be affected.

A. Kip Wall
Chief Executive Officer
0303#075

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of State Purchasing**

**Procurement of Computer Equipment and Services
(LAC 34:I.Chapter 55)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 39:199.C and D, the Office of the Governor, Division of Administration, Office of State Purchasing hereby gives notice of its intent to amend Rules relative to the purchase and lease of computer hardware and software; the procurement of hardware maintenance, software maintenance, and software support services; and the procedures for Procurement Support Team operations.

Further, the Office of State Purchasing proposes to repeal Rules relative to Emergency Procurement of Data Processing Equipment; Guidelines for Justification of Multi-Year Data Processing Leases; Unscheduled Maintenance of Data Processing Equipment; Procedures for Disposing of Leased, Rented or Purchased Data Processing Equipment; and Equipment Specifications in Solicitations, LAC 34:I.Appendix A.1-9:5, 1-9:6 and 1-9:7, 1-9:9, and 1-9:12, respectively.

The Office of the State Register will also renumber LAC 34:I.Appendix A to meet the APA mandate of prescribing "a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code." The following table should clarify the renumbering effort.

Former Section Number under Appendix A	New Section Number
New Material	5501
1-9:3	5503
1-9:4	5505, 5507, 5509, 5511
1-9:5	Repealed
1-9:6	Repealed
1-9:7	Repealed
1-9:8	5513
1-9:9	Repealed
1-9:12	Repealed

The text of this proposed Rule may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments until 5:00 p.m., April 21, 2003 to Denise Lea, Director, Office of State Purchasing, P.O. Box 94095, Baton Rouge, LA 70804-9095.

Denise Lea
Director

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

RULE TITLE: Procurement of Computer Equipment and Services

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

There will be no estimated implementation cost to state or local governmental units beyond the initial publication cost.

For the past two decades, information technology services have been procured through non-competitive negotiations. These rules establish a framework in which services will be procured utilizing competitive tools. The Computer Consulting Services and Support Agreement (CSSA) is the most recent tool implemented. This new contracting method establishes base hourly pricing within six categories of services. Phase I of this project established the maximum hourly prices a contractor may charge while pricing is showing in excess of a 20 percent savings compared to hourly charges paid in the past. The state is expecting to realize additional savings in phase II however, it is too early to determine actual amounts.

Other methods of procurement that will be utilized will be the Invitation to Bid (ITB) for basic maintenance services not covered in the CSSA. Complex Services over one million dollars will be bid utilizing a Request for Proposal (RFP).

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

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

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

There are no costs and/or economic benefits to directly affected persons or non-governmental groups. Any cost savings realized by the State in procuring hardware, software, maintenance and support services will result in less revenue to private entities that provide these items and services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There rules should increase competition. No significant overall impact is anticipated in employment.

Denise Lea
Director
0303#076

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Disproportionate Share Hospital Payment Methodologies Final Payment and Small Rural Hospitals (LAC 50:V.301-315)

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register, Volume 25, Number 5*). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register, Volume 29, Number 1*).

Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of uncompensated care reported by all qualified facilities as required by Senate Bill No. 883 of the 2001 Regular Session. Nothing shall be construed to impede or preclude the Department of Health and Hospitals from implementing the provisions in the Rural Hospital Preservation Act. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center-Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the findings and recommendations contained in the final reports of the study committees, the department proposes to amend the provisions governing disproportionate share hospital payments contained in the May 20, 1999 Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule

has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the May 20, 1999 Rule governing the disproportionate share payment methodologies as follows.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part V. Medical Assistance Program-Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low-income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospitals' disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter shall not exceed the hospital's net uncompensated cost as defined in §§305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable.

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the department. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

6. No additional payments shall be made to a hospital if an increase in cost is determined after audit.

7. Implementation of this Chapter 3 shall be subject to the approval of the Centers for Medicare and Medicaid Services.

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:

§303. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital:

1. must have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. treat inpatients who are predominantly individuals under 18 years of age; or

3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage); the numerator is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator is the total number of the hospital's inpatient days for a cost-reporting period. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage), the numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments, and the denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period; and

ii. the fraction (expressed as a percentage), the numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services; and the denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures

for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

c. hospitals shall be deemed disproportionate share providers eligible for reimbursement for inpatient services if their inpatient uninsured utilization rates are in excess of three percent:

i. inpatient uninsured utilization rate is a fraction (expressed as a percentage); the numerator is the total amount of the hospital's charges for inpatient services furnished to uninsured persons for the period, and the denominator is the total amount of the hospital's charges for inpatient services furnished to all persons for the period; or

d. hospitals shall be deemed disproportionate share providers eligible for reimbursement for outpatient services if their outpatient uninsured utilization rates are in excess of three percent:

i. outpatient uninsured utilization rate is a fraction (expressed as a percentage), the numerator is the total amount of the hospital's charges for outpatient services furnished to uninsured persons for the period, and the denominator is the total amount of the hospital's charges for outpatient services furnished to all persons for the period; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.1.a-h; and

6. in addition to the qualification criteria outlined in §303.A.1-5, effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least one percent.

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:

§305. High Uninsured Utilization Rate Hospitals

A. Definitions

High Uninsured Utilization Rate Hospital
a hospital that has an:

a. inpatient uninsured utilization rate of not less than 10 percent; or

b. outpatient uninsured utilization rate of not less than 20 percent.

Net Uncompensated Cost
the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of Medicaid eligible persons. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals shall submit an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible and supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department.

C. DSH payments to individual high uninsured utilization rate hospitals shall be equal to 95 percent of the hospital's uncompensated costs subject to the adjustment provision in §301.B.1 and 3.

D. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall prioritize payments to high uninsured utilization rate hospitals and shall calculate a pro rata decrease for each high uninsured utilization rate hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured utilization rate hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients. Hospitals found to be in violation of this provision for equal access are subject to sanction by the department.

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:

§307. Low Uninsured Utilization Rate Hospitals

A. Definitions

Low Uninsured Utilization Rate Hospital—a hospital that has:

- a. an inpatient uninsured utilization rate of less than 10 percent; or
- b. an outpatient uninsured utilization rate of less than 20 percent.

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of Medicaid eligible persons. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals shall submit an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible and supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of hospitals' compliance with the Medicaid ineligibility requirement as required by the department.

C. DSH payments to individual low uninsured utilization rate hospitals shall be equal to 95 percent of the hospital's uncompensated costs subject to the adjustment provision in §301.B.1 and 3.

D. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each low uninsured utilization rate hospital based on the ratio determined by dividing that hospital's

uncompensated cost by the total uncompensated cost for all qualifying low uninsured utilization rate hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients. Hospitals found to be in violation of this provision for equal access are subject to sanction by the department.

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:

§309. High Medicaid Utilization Rate Hospitals

A. Definitions

High Medicaid Utilization Rate Hospital—a hospital that has a Medicaid utilization rate in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments.

a. Medicaid utilization rate is a fraction (expressed as a percentage), the numerator is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator is the total number of the hospital's inpatient days for a cost-reporting period.

Net Uncompensated Cost—the sum of the cost of furnishing inpatient and outpatient hospital services to Medicaid patients, net of Medicaid payments (excluding disproportionate share payments), and the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

a. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from the cost of furnishing inpatient and outpatient hospital services to uninsured persons are any costs for the care of Medicaid eligible persons. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals shall submit patient-specific demographic data that does not identify individuals but is sufficient for audit of hospitals' compliance with the Medicaid ineligibility requirement as required by the department.

B. Disproportionate share hospital payments to individual high Medicaid utilization rate hospitals shall be equal to 95 percent of the hospital's uncompensated costs subject to the adjustment provision in §301.B.1 and 3.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high Medicaid utilization rate hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high Medicaid utilization rate hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

D. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients. Hospitals found to be in violation of this provision for equal access are subject to sanction by the department.

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:

§311. Small Rural Hospitals

A. Definitions

1. *Small Rural Hospital*—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994, and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR 412.92(a); or

c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000;

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census.

2. *Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following two pools:

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.1.a-h, which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.1-2, that are privately owned.

C. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. The disproportionate share payments to each qualifying rural hospital shall continue to be equal to that hospital's pro rata share of uncompensated costs for all hospitals meeting these criteria for the cost reporting period ended during the period April 1, 2000 through March 31, 2001, multiplied by the amount set for this pool. Payment will not exceed each qualifying hospital's actual uncompensated costs or the amount appropriated. If the cost reporting period is not a full period (12 months), actual uncompensated cost data for the previous cost reporting period may be used on a pro rata basis to equate to a full year.

E. A pro rata decrease necessitated by conditions specified in §301.B.1 for rural hospitals described in this §311 will be calculated using the ratio determined by dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the department. Recoupment 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.

F. Uncompensated costs to small rural hospitals for health care services provided in a rural health clinic that is licensed as part of the small rural hospital must meet the qualifying criteria contained in §303.A.6 and either §303.A.1, 2, or 3. In addition, qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.1.a-h. Qualifying hospitals must maintain a log documenting the provision of uninsured care in the rural health clinic as directed by the department.

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:

§313. Public State-Operated Hospitals

A. Definitions

Public State-Operated Hospital—a hospital that is owned or operated by the State of Louisiana, Department of Health and Hospitals.

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and

all other inpatient and outpatient payments received from patients.

B. DSH payments to individual public state-owned or operated hospitals shall be equal to 100 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

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:

§315. Psychiatric Hospitals

A. Definitions

Psychiatric Hospital—a freestanding psychiatric hospital that is not included in §313.

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

B. DSH payments to individual freestanding psychiatric hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual freestanding psychiatric hospitals shall be calculated based on the product of the ratio determined by dividing each qualifying freestanding psychiatric hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified freestanding psychiatric hospitals, and multiplying by an amount of funds for freestanding psychiatric to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days.

D. A pro rata decrease necessitated by conditions specified in §301.B for freestanding psychiatric hospitals will be calculated based on the ratio determined by dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this Section 315, then multiplying by

the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Disproportionate Share Hospital Payment Methodologies C Final Payment and Small Rural Hospitals

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2003-04, and 2004-05. It is anticipated that \$1,296 (\$648 SGF and \$648 FED) will be expended in SFY 2002-03 for the states administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections. Specifically, the State will not exceed its limit of federal financial participation in disproportionate share payments (DSH).

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

It is anticipated that implementation of this proposed rule will change the DSH payment amount to some qualifying hospitals. Payments to small rural hospitals and hospitals owned and operated by the Department of Health and Hospitals (DHH) are anticipated to not change. Payments to state hospitals not owned and operated by DHH are anticipated to decrease and payments to non-state public and private hospitals (excluding small rural hospitals) are anticipated to increase as a result of the redefinition of qualifying hospitals (22).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the proposed rules will improve the ability of non-state hospitals to compete with state hospitals for DSH payments. It is anticipated that such competition may have an adverse impact on employment in state hospitals to the

extent that DSH payments shift from state to non-state facilities.

Ben A. Bearden
Director
0303#061

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility

Expansion of Coverage for Low Income Pregnant Women

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

Section 1902(a)(10)(A)(i)(IV) and 1905(n)(2) of the Social Security Act requires states to provide Medicaid coverage to pregnant women whose pregnancy has been medically verified and whose family income is at or below 133 percent of the federal poverty level. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides coverage to low-income pregnant women in compliance with the minimum federal poverty level income allowed by regulations for pregnant women coverage. Income eligibility is based upon the current federal poverty level for the household size. Medicaid coverage for pregnant women is limited to prenatal care, delivery, 60 days of postpartum care and treatment for other conditions which may complicate the pregnancy. Under general Medicaid regulations, the agency has the option to provide coverage to low income pregnant women whose family income is up to, but no higher than, 185 percent of the federal poverty level.

Act 13 of the 2002 Regular Session of the Louisiana Legislature allocated funding for the eligibility determination costs associated with the expansion of Medicaid and the Louisiana Children's Insurance Program to provide coverage for pregnant women with family income not greater than 200 percent of the federal poverty level.

In compliance with Act 13 the department adopted an emergency Rule to amend the current provisions governing the eligibility income levels for coverage for low income pregnant women (*Louisiana Register, Volume 29, Number 1*). The department now proposes to continue the provisions contained in the January 1, 2002 emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will facilitate access to prenatal care for more low income pregnant women.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the current provisions governing eligibility for low income pregnant women and expands coverage to include low income pregnant women with family income greater than 133 percent, but less than or equal to 185 percent of the federal poverty level (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid EligibilityC Expansion of Coverage for Low Income Pregnant Women

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

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$600,422 for SFY 2002-03, \$4,195,087 for SFY 2003-04, and \$4,404,753 for SFY 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$1,472,740 for SFY 2002-03, \$10,545,207 for SFY 2003-04, and \$11,072,244 for SFY 2004-2005.

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

Implementation of this proposed Rule will increase expenditures for services rendered to low income pregnant women by approximately \$2,073,000 for SFY 2002-03, \$14,740,294 for SFY 2003-04, and \$15,476,997 for SFY 2004-05. The anticipated economic benefit to directly affected persons is that low income pregnant women (approximately 5000), with income between 133 and 185 percent of the federal poverty level, who would have previously been ineligible, will now have access to Medicaid coverage.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0303#057

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility
Inclusion of the Unborn Child

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). Section H of the Medicaid Eligibility Manual contains the provisions governing the determination of eligibility. Under general Medicaid Rules, states are required to follow the same rules and processes used by the most closely related cash assistance program to determine Medicaid eligibility. The bureau currently utilizes the income methodologies of the former Aid to Families with Dependent Children (AFDC) Program to determine Medicaid eligibility for families and children.

Section 1902(r)(2) of the Social Security Act allows states to use less restrictive income and resource methodologies in determining eligibility for most Medicaid eligibility groups than the methodologies used by the cash assistance program. Current Medicaid eligibility policy does not consider an unborn child when establishing the household size for the determination of eligibility for families and children. In order to reduce the administrative burden for the Medicaid Program and assist in eliminating the financial hardship for low-income families, the department proposes to amend Section H of the Medicaid Eligibility Manual to consider the unborn child when determining Medicaid eligibility for other children in the home.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will allow certain low-income families with children to become eligible for Medicaid benefits.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of Section H of the May 20, 1996 Rule governing the determination of Medicaid eligibility. Utilizing the provisions allowed under Section 1902(r)(2) of the Social Security Act, an unborn child shall be considered when establishing the household size for determination of Medicaid eligibility for other children in the household.

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Inclusion of the Unborn Child

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

It is anticipated that the implementation of this proposed rule will increase state program costs by approximately \$2,282 for SFY 2002-03, \$89,114 for SFY 2003-04 and \$91,787 for SFY 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 and for the state administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$5,480 for SFY 2002-03, \$224,006 for SFY 2003-04 and \$230,727 for SFY 2004-2005.

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

Implementation of this proposed rule will increase expenditures for services rendered to Medicaid eligible children (approximately 250 at an average cost of \$1,216 per eligible) by approximately \$7,600 for SFY 2002-03, \$313,120 for SFY 2003-04 and \$322,514 for SFY 2004-05. It is anticipated that the proposed rule will have an economic benefit for directly affected families in that inclusion of the unborn child will allow the other children in the household to become eligible for Medicaid coverage during the mother's pregnancy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0303#059

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility Income Disregards for Low Income Pregnant Women

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently utilizes the income methodologies of the former Aid to Families with Dependent Children (AFDC) Program to determine Medicaid eligibility for families and children. Under general Medicaid rules, States are required to follow the same rules and processes used by the most closely related cash assistance program to determine Medicaid eligibility.

Under Section 1902(r)(2) of the Social Security Act, States are allowed to use less restrictive income and resource methodologies in determining eligibility for most Medicaid eligibility groups than are used by the cash assistance program. Under current Medicaid eligibility policy for low income pregnant women, income eligibility is based upon the current federal poverty level for the household size. The total countable income of all members of the income unit is compared to the appropriate income standard for the income unit size.

Act 13 of the 2002 Regular Session of the Louisiana Legislature provided additional funding for eligibility determination costs associated with the expansion of Medicaid and the Louisiana Children's Insurance Program to provide coverage for pregnant women with family income not greater than 200 percent of poverty level.

In compliance with Act 13 and in order to reduce administrative burden for the Medicaid Program and reduce financial hardship for low income pregnant women, the Bureau adopted an Emergency Rule to amend Section I of the Medicaid Eligibility Manual to disregard the first 15 percent of monthly gross income under the federal poverty level standards when determining Medicaid eligibility for low income pregnant women (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act)(*Louisiana Register Volume 29, Number 1*). The department now proposes to continue the provisions contained in January 1, 2003 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972, by increasing the availability of health care coverage to low income women.

Proposed Rule

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

current policy governing countable income in the determination of Medicaid eligibility for low income pregnant women.

Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, the department disregards the first 15 percent of monthly gross income under the federal poverty level standards when determining Medicaid eligibility for low income pregnant women (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Income Disregards for Low Income Pregnant Women

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

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$96,627 for SFY 2002-03, \$670,752 for SFY 2003-04, and \$704,511 for SFY 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the states administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$236,913 for SFY 2002-03, \$1,686,072 for SFY 2003-04, and \$1,770,934 for SFY 2004-2005.

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

Implementation of this proposed Rule will increase expenditures for medical services rendered to low income pregnant women by approximately \$333,378 for SFY 2002-03, \$2,356,824 for SFY 2003-04, and \$2,475,445 for SFY 2004-05. The anticipated economic benefit to directly affected persons is that low income pregnant women (approximately 5000), who would have previously been ineligible, will now have access to Medicaid coverage as the proposed Rule will allow the department to disregard the first 15 percent of countable income under the federal poverty level standards when determining Medicaid eligibility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0303#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility
Pregnant Unmarried Minors CDisregard of Parent Income

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). Section I of the Medicaid Eligibility Manual addresses the eligibility factors considered in the determination of eligibility. Under general Medicaid Rules, states are required to follow the same Rules and processes used by the most closely related cash assistance program to determine Medicaid eligibility. The bureau currently utilizes the income methodologies of the former Aid to Families with Dependent Children (AFDC) Program to determine Medicaid eligibility for families and children.

Section 1902(r)(2) of the Social Security Act allows states to use less restrictive income and resource methodologies in determining eligibility for most Medicaid eligibility groups than the methodologies used by the cash assistance program.

In order to reduce the administrative burden for the Medicaid Program and assist in eliminating financial hardship for the families of pregnant unmarried minors, the Department proposes to amend Section I of the Medicaid Eligibility Manual to disregard the income of the parents in determining the Medicaid eligibility of a pregnant unmarried minor. Under current Medicaid eligibility policy for families and children, the parents of a pregnant unmarried minor who live in the home with the pregnant unmarried minor are mandatory members of the income unit and their income must be considered in determining Medicaid eligibility.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972. The proposed Rule will assist in eliminating financial hardship for the families of pregnant unmarried minor.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the May 20, 1996 Rule governing countable

income in the determination of Medicaid eligibility for pregnant unmarried minors.

Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, the income of the parents who live in the home with a pregnant unmarried minor will be disregarded in the determination of Medicaid eligibility for the pregnant unmarried minor.

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

**RULE TITLE: Medicaid Eligibility
Pregnant Unmarried Minors CDisregard of
Parent Income**

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

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$16,518 for SFY 2002-03, \$664,412 for SFY 2003-04 and \$684,347 for SFY 2004-05. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$40,362 for SFY 2002-03, \$1,670,145 for SFY 2003-04 and \$1,720,247 for SFY 2004-2005.

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

Implementation of this proposed Rule will increase expenditures for services rendered to pregnant unmarried minors (approximately 748 at an average cost of \$3,031 per eligible) by approximately \$56,664 for SFY 2002-03, \$2,334,557 for SFY 2003-04 and \$2,404,594 for SFY 2004-05. It is anticipated that implementation of this proposed Rule will have an economic benefit for the parents of pregnant unmarried minors in that they will not have to incur the expense for prenatal and postpartum care.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0303#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility Treatment of Annuities

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.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the *Medicaid Eligibility Manual* in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). Section I of the *Medicaid Eligibility Manual* addresses the eligibility factors considered in the determination of eligibility.

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 amended Section 1917(c) of the Social Security Act and established Section 1917(d) to set forth Rules wherein transfers of assets and trusts must be considered in determining eligibility for Medicaid. Current Medicaid eligibility rules are not clear relative to the consideration of annuities in the eligibility determination process. The policy does not clearly state that an annuity is considered a legal instrument or device similar to a trust.

In order to comply with the Omnibus Budget Reconciliation Act of 1993 and curb abuse in the transfer of assets, the Bureau adopted an Emergency Rule to amend Section I of the *Medicaid Eligibility Manual* in order to clarify current policy regarding annuities (*Louisiana Register, Volume 29, Number 1*). The Bureau now proposes to adopt a Rule to continue the provisions contained in the January 1, 2003 emergency rule.

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

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends current Medicaid eligibility policy governing the transfer of assets and trusts to further define and clarify the consideration of annuities in the Medicaid eligibility determination process.

An annuity is considered a legal instrument or device similar to a trust. An annuity is defined as a contract or agreement by which one receives fixed, non variable payments on an investment for a lifetime or a specified number of years. An annuity containing a balloon payment will not be classified as an annuity for Medicaid eligibility purposes, but rather will be considered an available resource. A commercial (non-employment related) annuity purchased by or for an individual using that individual's assets will be

considered an available resource unless it meets all of the following criteria. The annuity:

1. is irrevocable;
2. pays out principal and interest in equal monthly installments (no balloon payment) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the annuitant;
3. names the state of Louisiana, Department of Health and Hospitals or its successor agency as the residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the individual during his lifetime; and
4. is issued by an insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

This policy change shall be applicable to all pending applications, renewals of eligibility or changes in situations (as defined in Section L of the Medicaid Eligibility Manual) where the applicant/recipient has an annuity. Existing annuities which do not meet all of the above criteria must be amended to comply with these requirements within 90 days of the first renewal or first change in their situation (as defined in Section L of the Medicaid Eligibility Manual) occurring after enactment of this Rule.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Treatment of Annuities

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

It is anticipated that the implementation of this proposed rule will decrease state program costs by approximately \$1,222,598 for SFY 2002-03, \$2,475,287 for SFY 2003-04, \$2,549,545 for SFY 2004-05. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended in SFY 2002-03 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will decrease federal revenue collections by

approximately \$2,999,236 for SFY 2002-03, \$6,222,136 for SFY 2003-04 and \$6,408,801 for SFY 2004-05.

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

It is anticipated that this proposed Rule will reduce the number of eligible Medicaid clients by curbing abuse in the transfer of assets. This proposed Rule amends current Medicaid eligibility policy governing the transfer of assets and trusts to further define and clarify the consideration of annuities in the Medicaid eligibility determination process. It is anticipated that the implementation of this proposed Rule will decrease program expenditures for services (for approximately 350 applicants/recipients) by approximately \$4,222,050 for SFY 2002-03, \$8,697,423 for SFY 2003-04 and \$8,958,346 for SFY 2004-05.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0303#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Mentally Retarded/Developmentally Disabled Waiver
Skilled Nursing 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 Administrative Procedure Act, R.S. 49:950 et seq.

Under the provisions of Section 1915(c) of the Social Security Act, states may provide services not generally reimbursable by the Medicaid Program to groups of individuals in the community who meet the qualifications for institutional care. Such programs are known as home and community based services waivers. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in July 1990 establishing the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver and the provisions governing the services covered under the waiver (*Louisiana Register, Volume 16, Number 7*). The MR/DD Waiver is one of the five waivers that are currently administered by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services.

The Bureau of Community Supports and Services has determined that it is necessary to incorporate a new service into the MR/DD Waiver. The Centers for Medicare and Medicaid Services approved a waiver amendment to add skilled nursing services to the list of services provided under the MR/DD Waiver and the Bureau promulgated an emergency rule to include this service (*Louisiana Register, Volume 28, Number 11*). The bureau now proposes to continue the provisions of the November 1, 2002 emergency rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972. This Rule should have a positive effect on family functioning by allowing individuals served by the MR/DD waiver to receive skilled nursing services.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the July 20, 1990 Rule to include skilled nursing services as a service in the Mentally Retarded/Developmentally Disabled Waiver.

Recipient Criteria

A. Skilled nursing services will be available to medically fragile individuals who meet the following criteria:

1. are ventilator dependent or non-ambulatory, or have undergone a tracheotomy, or gastrostomy; and
2. require life-sustaining equipment (ventilators, suction machines, apnea monitors, nebulizers and/or pulse oximeters); and
3. are medically approved by their primary physician, as documented by a doctor's order and a letter of medical necessity from the physician.

Provider and Staff Qualifications

A. A home health agency must enroll as a MR/DD Waiver service provider in order to provide skilled nursing services under the MR/DD Waiver.

B. Skilled nursing services shall be provided by either a licensed registered nurse or a licensed practical nurse employed by a Medicaid enrolled home health agency.

Interested persons may submit written comments to Barbara Dodge at the Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

**RULE TITLE: Mentally Retarded/Developmentally
Disabled Waiver Skilled Nursing Services**

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

It is anticipated that the implementation of this proposed rule will increase state program costs by approximately \$282,701 for SFY 2002-03, \$429,068 for SFY 2003-04, and \$441,941 for SFY 2004-05. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended in SFY 2002-2003 for the states administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$693,321 for SFY 2002-03, \$1,078,552 for SFY 2003-04, and \$1,110,908 for SFY 2004-05.

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

This proposed rule would benefit recipients by adding skilled nursing services to the list of services provided under the Mentally Retarded/Developmentally Disabled Waiver. Implementation of this proposed rule will increase program expenditures by approximately \$975,806 for SFY 2002-03, \$1,507,620 for SFY 2003-04, and \$1,552,849 for SFY 2004-05. The above estimates are based on providing services to approximately 22 recipients at an average cost of \$66,532 per recipient.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known estimated effect on competition. However, this proposed rule could result in increased employment opportunities for registered nurses and licensed practical nurses.

Ben A. Bearden
Director
0303#060

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Nursing Facility Services C Standards for Payment
Ventilator Dependent Care C Requirements for Payments
(LAC 50:II.10155)**

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in January of 1996 that established standards for payments for nursing facility services. (*Louisiana Register, Volume 22, Number 1*). Subsection 10155.S of the Rule contains provisions governing skilled nursing – technology dependent care (SN-TDC). Currently, nursing facilities that provide SN-TDC services for children are required to establish a protocol for outpatient follow-up, case management and ongoing staff training through a close working relationship with Children’s Hospital or other acute care referral sources. The Department proposes to amend Subparagraph 10155.S.2.u of the standards for payment to require nursing facilities that provide ventilator dependent care services to Medicaid recipients from birth through age 25 to attend specialized training for this level of care.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed

Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, as described in R.S. 49:942 by improving the quality of care rendered to technology dependent recipients in nursing facilities.

The Department of Health and Hospitals, Bureau of Health Services Financing amends the January 20, 1996 Rule governing the standards for payment for nursing facility services.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 101. Nursing Facilities C Standards for Payment

Subchapter G. Levels of Care

§10155. Standards of Levels of Care

A. - S.2.t. ...

u. require staff to attend specialized training on ventilator assisted care if the facility provides SN-TDC services to Medicaid recipients from birth through age 25. The training will be conducted by a contractor designated by the department. The facility shall also cooperate with ongoing monitoring conducted by the contractor. Training content includes:

- i. the special health needs of, and risks to ventilator-dependent recipients;
- ii. the proper use and maintenance of equipment in use or new to the facility;
- iii. current, new, or unusual health procedures and medications;
- iv. diagnoses and treatments specific to pediatrics and in the development and nutritional needs of recipients;
- v. emergency intervention;
- vi. accessing school services for ventilator-assisted recipients; and
- vii. discharge planning where families express interest in a recipient returning home.

S.2.v. - T. ...

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 22:34 January 1996), amended LR 23:970 (August 1997), LR 29:

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

**RULE TITLE: Nursing Facility Services
Standards for Payment Ventilator Dependent
Care Requirement for Payments**

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

It is anticipated that the implementation of this proposed Rule will increase state fund expenditures \$12,500 for SFY 2003-04, \$12,500 for SFY 2004-05 and \$12,500 for SFY 2005-2006. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended for the state's administrative expense for promulgation of this proposed Rule and the final Rule in SFY 2002-03.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by \$12,500 for SFY 2003-04, \$12,500 for SFY 2004-05, and \$12,500 for SFY 2005-2006.

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

Implementation of this proposed Rule will provide reimbursement for a professional services contract for training, technical assistance, and monitoring of nursing facility staff who provide care to ventilator dependent residents within a specified age range. Implementation of this proposed Rule will increase expenditures by approximately \$25,000 for SFY 2003-04, \$25,000 for SFY 2004-05, and \$25,000 for SFY 2005-2006.

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

There is no known effect on competition and employment.

Ben A. Bearden
Director
0303#061

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Private Hospitals Outlier Payments

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established a reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children under six years of age (*Louisiana Register, Volume 20, Number 6*). The reimbursement methodology also addressed payments to all acute care hospitals for catastrophic costs associated with providing medically

necessary services to infants one year of age or under. An outlier payment is calculated on an individual case basis and paid at cost if covered charges for medically necessary services exceeds 200 percent of the prospective payment.

The June 20, 1994 rule was subsequently amended to revise the qualification and calculation for outlier payments (*Louisiana Register, Volume 22, Number 2*). To qualify for an outlier payment, the covered charges for the case must exceed both \$150,000 and 200 percent of the prospective payment. Outlier cases qualifying under these criteria are reimbursed the marginal cost associated with the excess cost above the prospective payment amount. As a result of the allocation of funds by the Legislature during the 2002 Regular Session, the bureau adopted an Emergency Rule that reduced the outlier payments made to private hospitals by amending the definition of marginal cost contained in the February 20, 1996 Rule (*Louisiana Register, Volume 28, Number 7*). In addition, the base period for the hospital specific cost-to-charge ratio that is utilized for the calculation of outlier payments was changed and a deadline was established for receipt of the written request filing for outlier payments. The bureau now proposes to adopt a Rule to continue the provisions contained in the July 1, 2002 Emergency Rule.

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

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the February 20, 1996 rule by changing the definition of marginal cost. The marginal cost factor for outliers shall be considered to be 100 percent of costs after the costs for the case exceed the hospital's prospective payment. In addition, the Bureau amends the reimbursement methodology for calculating outlier payments for private hospitals by changing the hospital specific cost-to-charge ratio from the base period currently being utilized to a hospital specific cost-to-charge ratio based on the hospital's cost report period ending in state fiscal year (SFY) 2000 (July 1, 1999 through June 30, 2000). The cost-to-charge ratio for new hospitals and hospitals that did not provide Medicaid Neonatal Intensive Care Unit (NICU) services in SFY 2000 will be calculated based on the first full year cost reporting period that the hospital was open or that Medicaid NICU services were provided. Outlier payments are not payable for transplant procedures as transplants are not reimbursed on a prospective basis.

A deadline of six months subsequent to the date that the final claim is paid is established for receipt of the written request filing for outlier payments.

The hospital specific cost-to-charge ratio will be reviewed bi-annually and the outlier payment may be adjusted as a result of this review at the discretion of the secretary. Upon adoption of the Rule, hospitals shall receive notification of an impending change to the hospital specific outlier payment by means of a letter sent directly to the hospital.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Private Hospitals Outlier Payments**

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

It is anticipated that the implementation of this proposed rule will decrease state program costs by approximately \$1,770,900 for SFY 2002-03, \$1,792,672 for SFY 2003-04, and \$1,846,452 for SFY 2004-05. It is anticipated that \$270 (\$135 SGF and \$135 FED) will be expended in SFY 2002-03 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will decrease federal revenue collections by approximately \$4,344,283 for SFY 2002-03, \$4,506,245 for SFY 2003-04, and \$4,641,432 for SFY 2004-05.

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

Implementation of this proposed rule will reduce the outlier payments to private hospitals through a revision in the reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children under six years of age. The reimbursement methodology also addresses payments to all acute care hospitals for catastrophic costs associated with providing medically necessary services to infants one year of age or under. This proposed rule will decrease reimbursement by approximately \$6,115,453 for SFY 2002-03, \$6,298,917 for SFY 2003-04, and \$6,487,884 for SFY 2004-05.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0303#063

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

**Pipeline Safety Definitions
(LAC 43:XIII.125)**

The Louisiana Office of Conservation hereby proposes to promulgate new definitions for master meter, school and special class gas systems in LAC 43:XIII.125 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana, particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 30:557.G. The proposed new and amended definitions will clarify pipeline safety responsibilities of master meter, school and special class gas system operators.

Title 43

NATURAL RESOURCES

Part XIII. Office of Conservation—Pipeline Safety

Subpart 1. General Provisions

Chapter 1. General

§125. Definitions

*Master Meter System*Ca pipeline system for distributing gas within, but not limited to, a definable area such as a mobile home park, housing project, apartment complex or university, where the operator purchases metered gas from an outside source for resale through a gas pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

*Special Class System*Ca pipeline system for distributing gas to a federal, state or local government facility or a private facility performing a government function, where the operator receives or purchases gas from an outside source, and distributes the gas through a pipeline system to more than one outlet beyond the meter or regulator, which ultimate outlet may, but need not be, individually metered or charged a fee for the gas. Any exemption from pipeline safety regulation granted to master meter systems will apply to Special Class Systems.

*School System*Ca pipeline system for distributing natural gas to a public or private pre-kindergarten, kindergarten, elementary, secondary, or high school. Upon request for a revision of service by the school, or by the school system of which the school is a component, the local distribution company providing natural gas service to the school shall install a meter at the building wall of each building of the school that utilizes natural gas. The gas piping from the outlet of the meter to the inside of the building shall be installed above ground, and shall be maintained by the school in accordance with requirements of the Office of the State Fire Marshal. The outside piping that is upstream of the meter to the outlet of the meter shall be owned and maintained by the local distribution company in accordance

with Minimum Pipeline Safety Regulations. The pipeline system of a school that does not request the revision of service described by this paragraph shall be deemed a Special Class System, and subject to the requirements of such system.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), amended LR 29:

Family Impact Statement

1. The effect of these Rules on the stability of the family. These Rules will have no effect on the stability of the family.

2. The effect of these Rules on the authority and rights of parents regarding the education and supervision of their children. These Rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of these rules on the functioning of the family. These Rules will have no effect on the functioning of the family.

4. The effect of these rules on family earnings and family budget. These Rules will have no effect on family earnings and family budget.

5. The effect of these rules on family earnings and family budget. These Rules will have no effect on the functioning of the family.

6. The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules. These Rules will have not effect on the ability of the family or local government to perform the function as contained in the proposed Rules.

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 30:557.G, notice is hereby given that the commissioner of Conservation will conduct a public hearing at 9 a.m., Monday, April 28, 2003, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA. A copy of the proposed regulations may be obtained by contacting Mariano Hinojosa at 225-342-5519 or by writing the Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804.

All interested parties will be afforded the opportunity to submit comments regarding these new and amended regulations at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 5 p.m., Monday, May 5, 2003, at the following address: Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804, Re: Docket No. PL 03- 004.

All persons having interest in the aforesaid shall take notice thereof.

James H. Welsh
Commissioner of Conservation

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Pipeline Safety Definitions

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

There should be no additional costs or savings regarding the amendment of this Rule. This action amends and adopts

pipeline safety definitions regarding master meter, special class and school natural gas installations.

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

The effect on state revenue collections will be minimal. Currently, every private and public school pays an annual pipeline safety inspection fee of \$15 per school. Under the proposed Rule, schools may request a revision of service and thereby opt out of pipeline safety jurisdiction and avoid the annual pipeline safety fee. It is estimated that 1,000 public and private schools will convert their gas facilities and opt out of pipeline safety jurisdiction.

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

Schools that request a revision of gas service will incur conversion costs to install gas service lines and gas meters at each building. The total cost will vary from school to school. The estimated average cost per school is \$2,000. However, all schools that request such a revision of service will realize an annual savings of approximately \$2,000 per year. The savings are the avoided cost of leak surveys, reports, and Operations and Maintenance Plans.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no significant effect on competition or employment. The private entities that provide services and reports, which the schools would no longer require, would experience reduced revenues equivalent to the savings realized by schools.

James H. Welsh
Commissioner
0303#028

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Surface Mining

(LAC 43:XV.105, 1105-1109, 2111, 2113, 2311, 2323, 2731, 2733, 3103, 3115, 3705, 5423, 5424 and 5425)

Under the authority of the Louisiana Surface Mining and Reclamation Act, particularly R.S. 30:901 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Office of Conservation proposes to adopt rules and regulations to amend LAC 43:XV, (Statewide Order 29-O-1) the Louisiana Surface Mining Regulations, governing valid existing rights and revegetation success standards for post-mining land uses of pastureland and wildlife habitat.

The Department of the Interior, Office of Surface Mining Reclamation and Enforcement, under the provisions of 30 CFR 732.17(d), has notified the Louisiana Office of Conservation, Injection and Mining Division of changes in Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and the federal regulations promulgated pursuant to SMCRA which make it necessary for Louisiana to modify its Surface Mining Regulatory Program to remain consistent with all federal regulations. The director of the Office of Surface Mining Reclamation and Enforcement approved the proposed amendments in *Federal Register*, Vol. 67, No. 38, February

Title 43

NATURAL RESOURCES

Part XV. Office of Conservation - Surface Mining

Subpart 1. General Information

Chapter 1. General

§105. Definitions

A. ...

* * *

*Valid Existing Rights*Ca set of circumstances under which a person may, subject to office approval, conduct surface coal mining operations on lands where §922.D of the Act and §1105 of these regulations would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §1105 of these regulations or §922.D of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the act and the regulatory program.

a. Property Rights Demonstration. Except as provided in §105.*Valid Existing Rights*.c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of §922.D of the Act or §1105 of these regulations. Applicable state law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

b. Except as provided in §105.*Valid Existing Rights*.c, a person claiming valid existing rights also must demonstrate compliance with one of the following standards.

i. Good Faith/All Permits Standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. At a minimum, an application must have been submitted for any permit required under Subpart 3 of these regulations.

ii. Needed for and Adjacent Standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §922.D of the Act or §1105 of these regulations. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of §922.D of the Act or §1105 of these regulations when the office approved the permit for the original operation or when

the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the office may consider factors such as:

(a). the extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of §922.D of the Act or §1105 of these regulations depend upon use of that land for surface coal mining operations;

(b). the extent to which plans used to obtain financing for the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations;

(c). the extent to which investments in the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations; and

(d). whether the land lies within the area identified on the life-of-mine map submitted under §2535.A.3 before the land came under the protection of §1105.

a. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by §1105 of these regulations or §922.D of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of surface coal mining operations in §105:

i. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the person has a legal right to use the road for surface coal mining operations;

ii. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations;

iii. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act; or

iv. *valid existing rights* exist under §105.*Valid Existing Rights*.a and b.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998), LR 29:

Subpart 2. Areas Unsuitable for Mining

Chapter 11. Areas Designated by Act of Congress

§1105. Areas Where Mining Is Prohibited or Limited

A. No surface coal mining operation shall be conducted on the following lands unless the applicant has either valid existing rights, as determined under §2323, or qualifies for the exception for existing operations under §1109.

A.1. - A.4.a. ...

b. where the office allows the public road to be relocated or the area affected to be within 100 feet of such road, after public notice and opportunity for a public hearing in accordance with §1107.D, and after making a written finding that the interests of the affected public and landowners will be protected;

A.5. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

§1107. Procedures

A. ...

B. The office shall reject any portion of the application that would locate surface coal mining operations on land protected under §1105 unless:

1. the site qualifies for the exception for existing operations under §1109;
2. a person has valid existing rights for the land, as determined under §2323;
3. the applicant obtains a waiver or exception from the prohibitions of §1105 in accordance with §1107.D or E; or
4. for lands protected by §1105.A.3, both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with §1107.F.

C. If the office is unable to determine whether the proposed operation includes land within an area specified in §1105.A.1 or is located closer than the limits provided in §1105.A.6 or 7, the office shall transmit a copy of the relevant portions of the permit application to the federal, state or local government agency with jurisdiction over the protected land, structure or feature for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request. The notice must specify that another 30 days is available upon request, and that the office will not necessarily consider a response received after the comment period provided. If no response is received within the 30-day period or within the extended period granted, the office may make the necessary determination based on the information it has available.

D. §1107.D does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that join a public road, as described in §1105.A.4.b. Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in §1105.A.4.b) or where the applicant proposes to relocate or close any public road, the office or public road authority designated by the office shall:

1. require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;
2. provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;
3. if a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and
4. make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from

the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the office or public road authority determines that the interests of the public and affected landowners will be protected.

E.1. Subsection 1107.E does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in §1105.A.5. Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver prior to August 3, 1977 from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

3.a. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

b. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public-property records pursuant to state laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

F.1. Where the office determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the office shall transmit to the federal, state or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond. The notice must specify that another 30 days is available upon request, and that failure to interpose a timely objection will constitute approval. The office may not issue a permit for a proposed operation subject to the provisions of this Paragraph unless all affected agencies jointly approve.

2. Subsection 1107.F does not apply to lands for which a person has valid existing rights, as determined under §2323 or lands within the scope of the exception for existing operations in §1109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

§1109. Exception for Existing Operations

A. The prohibitions and limitations of §1105 do not apply to surface coal mining operations for which a valid permit, issued under Subpart 3 of these regulations, exists when the land comes under the protection of §1105. This

exception applies only to lands within the permit area as it exists when the land comes under the protection of §1105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

Subpart 3. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems

Chapter 21. Coal Exploration and Development

§2111. General Requirements: Development

Operations Involving Removal of More Than 250 Tons

A. - A.7. ...

8. for any lands listed in §1105, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of §1105, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105.

B. - B.3 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

§2113. Applications: Approval or Disapproval of Development of More Than 250 Tons

A. - B.3 ...

4. will, with respect to exploration activities on any lands protected under §1105, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the office will provide reasonable opportunity to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105, to comment on whether the finding is appropriate.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

Chapter 23. Surface Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information

§2311. Relationship to Areas Designated Unsuitable for Mining

A. ...

B. If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required by §1107.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

§2323. Valid Existing Rights Determination

A. OSM is responsible for determining valid existing rights for federal lands listed at §1105. The office is responsible for determining valid existing rights for all non-Federal lands listed at §1105. The provisions of this Section apply when the office is responsible for determining valid existing rights.

B. A request for a valid existing rights determination must be submitted if surface coal mining operations will be conducted on the basis of valid existing rights under §1105. This request may be submitted before submitting an application for a permit or boundary revision.

1. Requirements for property rights demonstration. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the applicant must provide a property rights demonstration under §105. *Valid Existing Rights*.a. This demonstration must include the following items:

a. a legal description of the land to which the request pertains;

b. complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which your request pertains;

c. a complete chain of title for the surface and mineral estates of the land to which the request pertains;

d. a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

e. a description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Louisiana property law;

f. complete documentation of the nature and ownership, as of the date that the land came under the protection §1105, of all property rights for the surface and mineral estates of the land to which the request pertains;

g. names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

h. if the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of the applicant's property rights claims;

i. any comments that the applicant received in response to the notification provided under §2323.B.1.h.

2. Requirements for Good Faith/All Permits Standard. If the request relies upon the good faith/all permits standard in §105. *Valid Existing Rights*.b.i, the applicant must submit the information required under §2323.B.1. The applicant also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

a. approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of §1105;

b. application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of §1105;

c. an explanation of any other good faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of §1105.

3. Requirements for Needed for and Adjacent Standard. If the request relies upon the needed for and adjacent standard in §105. *Valid Existing Rights*.b.ii, the applicant must submit the information required under §2323.B.1. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §1105.

4. Roads. If the request relies upon one of the standards for roads in §105. *Valid Existing Rights*.c.i-iii, documentation must show that:

a. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the applicant has a legal right to use the road for surface coal mining operations;

b. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

c. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act.

C. Initial Review of Request

1. The office shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements of §2323.B. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of §2323.B, the office shall notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of §2323.B, the office shall implement the notice and comment requirements of §2323.D.

4. If the information requested under §2323.C.2 is not provided within the time specified or as subsequently extended, the office shall issue a determination that valid

existing rights have not been demonstrated, as provided in §2323.E.4.

D. Notice and Comment Requirements and Procedures

1. When the request satisfies the completeness requirements of §2323.C, the applicant must publish a public notice in accordance with §3103.A. This notice must invite comment on the merits of the request. The notice shall contain, at a minimum:

a. the location of the land to which the request pertains;

b. a description of the type of surface coal mining operations planned;

c. a reference to and brief description of the applicable standards under the definition of valid existing rights in §105;

i. if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the notice also must include a description of the property rights claimed and the basis for that claim;

ii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.i, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations;

iii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.ii, the notice also must include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations;

d. if the request relies upon one or more of the standards in §105. *Valid Existing Rights*.b, c.i, and c.ii, a statement that the office will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by §2323.D.3, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim;

e. a description of the procedures that the office will follow in processing the request;

f. the closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice;

g. a statement that interested persons may obtain a 30-day extension of the comment period upon request; and

h. the name and address of the office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

2. The office shall promptly provide a copy of the notice required under §2323.D.1 to:

- a. all reasonably locatable owners of surface and mineral estates in the land included in the request; and
- b. the owner of the feature causing the land to come under the protection of §1105, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of §1105.

3. The letter transmitting the notice required under §2323.D.2 must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.

E. How a Decision Will Be Made

1. The office must review the materials submitted under §2323.B, comments received under §2323.D, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the office must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the office deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the office must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in §105. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

3. Impact of Property Rights Disagreements. This Paragraph applies only when the request relies upon one or more of the standards in §105. *Valid Existing Rights*. b, c.i, and c.ii.

a. The office must issue a determination that the applicant has not demonstrated valid existing rights if property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The office will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This Paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under §§2323.D.1 or D.3.

b. If the record indicates disagreement as to the accuracy of property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the office must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under §105. *Valid Existing Rights*. a, c.i, or c.ii, as appropriate. The office must then proceed with the decision process under §2323.E.2.

4. The office must issue a determination that the applicant has not demonstrated valid existing rights if information that the office requests under §§2323.C.2 or E.1 is not submitted within the time specified or as subsequently extended. The office will make this determination without

prejudice, meaning that the applicant may refile a revised request at any time.

5. After making a determination, the office must:

a. provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105; and

b. publish notice of the determination in a newspaper of general circulation in the parish in which the land is located.

F. Administrative and Judicial Review. A determination that the applicant has or does not have valid existing rights is subject to administrative and judicial review under §§3301 and 3303.

G. Availability of Records. The office must make a copy of that request available to the public in the same manner as the office must make permit applications available to the public under §2119. In addition, the office must make records associated with that request, and any subsequent determination under §2323.E, available to the public in accordance with the requirements and procedures of §6311.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

Chapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan

§2731. Protection of Public Parks and Historic Places

A. - A.1. ...

2. if valid existing rights exist or joint agency approval is to be obtained under §1107.F, to minimize adverse impacts.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

§2733. Relocation or Use of Public Roads

A. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §1107.D, the applicant seeks to have the office approve conduction of the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way, or seeks approval for relocating a public road.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

Chapter 31. Public Participation, Approval of Permit Applications and Permit Terms and Conditions

§3103. Public Notices of Filing of Permit Applications

A. - A.4. ...

5. if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with §1107.D, a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

A.6. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

§3115. Criteria for Permit Approval or Denial

A.-A.4.b. ...

c. not on any lands subject to the prohibitions or limitations of §1105; or

A.4.d. - A.16. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

Chapter 37. Small Operator Assistance

§3705. Eligibility for Assistance

A. - A.1. ...

2. establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

a. the pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

b. the pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

A.2.c. - A.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

Subpart 5. Permanent Program Performance Standards

Chapter 53. Permanent Program Performance

Standards: Surface Mining Activities

§5423. Revegetation: Standards for Success

A. - B.1.d.iv. ...

e. The criteria and procedures for determining ground cover and production success are found at §5424.

B.2. - B.8. ...

a. The criteria and procedures for determining ground cover and stocking success are found at §5425.

B.9. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 21:1082 (October 1995), LR 29:

§5424. Revegetation: Standards for Success C Post-Mining Land Use of Pastureland

A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and production success for areas being restored to pastureland.

2. Pursuant to §5423, ground cover and production success on pastureland must be determined on the basis of the following conditions:

a. general revegetation requirements of the approved permit;

b. ground cover density; and

c. production.

3. The permittee is responsible for determining and measuring ground cover and production and submitting this data to the commissioner for evaluation. Procedures for making these determinations are described below.

B. Success Standards and Measurement Frequency

1. Ground Cover

a. Ground cover shall be considered acceptable if it is at least 90 percent of the approved success standard at a 90 percent statistical confidence level for any two of the last four years of the five-year responsibility period. The success standard for ground cover shall be 90 percent.

i. Ground cover must be measured over each noncontiguous area that is proposed for release. The aggregate of areas with less than 90 percent ground cover must not exceed 5 percent of the release area. These areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of 90 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of 90 percent. Refer to sampling technique for ground cover in §5424.C.2.a.

b. Ground cover shall consist of the species mixture approved in the original permit or an approved acceptable species mixture as recommended by the USDA/Natural Resources Conservation Service (NRCS) for use in that area. No more than 15 percent of the stand can be approved species not listed in the permit.

c. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a .10 alpha error). Whenever ground cover is equal to or exceeds the success standard, the statistical confidence interval test does not have to be determined.

d. Ground cover success and forage production success need not be met during the same year.

e. Ground cover shall be sampled once per year during any two of the last four years of the five-year responsibility period to verify cover data.

2. Forage Production

a. The success standard for production of hay on pastureland shall be 90 percent of an approved reference area, if a reference area is established, or 90 percent of the estimated yield found in the Soil Conservation Service (now Natural Resources Conservation Service (NRCS)) parish soil

survey. The estimated yields are those expected under a high level of management and were determined by the NRCS based on records of farmers, conservationists and extension agents.

b. Production shall be sampled for at least two separate years. Any two of the last four years of the five-year responsibility period may be selected.

3. Reference Area Requirements

a. Reference areas must be representative of soils, slope, aspect, and vegetation in the premined permit area. However, in cases where differences exist because of mixing of several soil series on the reclaimed area or unavailability of a reference area as herein described, yields must be adjusted.

b. Reference area pastureland must be under the same management as pastureland in the reclaimed area. This means that it must:

- i. consist of similar plant species and diversity as approved in the permit;
- ii. be currently managed under the same land use designation as the proposed mined release area;
- iii. consist of soils in the same land capability class;
- iv. be located in the general vicinity of the mined test area to minimize the impact of differing weather;
- v. use the same fertilizer and pest management techniques;
- vi. use fertilizer rates based on the same yield goal;
- vii. be mowed at the same time to the same height as the reclaimed area;
- viii. use identical harvest dates and plant populations; and
- ix. use any other commonly used management techniques not listed above such as adequate weed and insect control, provided the pastureland area and the reference plot are treated identically.

c. Reference areas shall consist of a single plot (whole plot) at least four acres in size. Either statistically adequate subsampling or whole plot harvesting may be used to determine yields.

d. Reference plot forage yields must be at a level that is reasonably comparable to the parish average for the given crop. Reference plot yields that are less than 80 percent of the parish average are highly suspect and may be rejected.

e. Reference areas may be located on undisturbed acreage within permitted areas. If not so located, the permittee must obtain from the landowner(s) a written agreement allowing use of the property as a reference area and allowing right of entry for regulatory personnel.

f. When release areas and reference plots fall on different soil series, adjustments must be made to compensate for the productivity difference.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites;
- ii. a sampling technique unaffected by the sampler's preference; and

iii. sufficient samples to represent the true mean of the vegetation characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, at least one ground cover sample point must be measured in each noncontiguous unit, if the release area does not consist of a single unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows:

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable	Not approved in permit

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Productivity

i. When evaluating productivity, two components that may potentially influence the end results of production yields are time of harvest and moisture content.

(a). Time of Harvest. Herbaceous species must be harvested at times and frequencies appropriate to the plant species (i.e., cool-season species should be sampled in the winter or spring; warm-season species should be sampled in the summer or fall). Sampling should be timed to

coincide with seed ripeness or the mature stage of the target vegetative species. Plant communities that are comprised of both cool- and warm-season species should be sampled when the overall plant community production is at a peak. If an area has not had herbaceous biomass removed (i.e., mowing, baling, grazing) since the last sampling, then sampling must not be conducted until the vegetation is removed and regrowth has taken place.

(b). Moisture Content. The moisture content of harvested herbaceous biomass and other vegetative components must be standardized, in order to eliminate weight variations due to moisture content. The weight of harvested vegetation is to be standardized by oven-drying at 60° C for 24 hours or until the weight stabilizes.

ii. Productivity can be evaluated by hand-harvesting or with mechanized agricultural implements. Productivity measurements must be obtained during the growing season of the primary vegetation species. Productivity is estimated from only the current season's growth. There are two methods that can be used to evaluate production: using sampling frames for harvesting plots or whole-field harvests.

(a). Sampling Frames. A sampling frame shall be an enclosure, of known dimension appropriate for sampling pasture lands, capable of enclosing the sample location. A sample location shall be established at each of the randomly chosen sites, such that the center of the sampling frame is the random point. The permittee shall clip the biomass 2 inches above ground level within the frame. The biomass to be clipped shall be from all plant species growth whose base lies within the sampling frame. This biomass shall then be weighed and recorded. As each frame is clipped and weighed, the biomass shall be put into a bag for oven drying. Samples shall be oven-dried to a constant weight and reweighed to determine dried weight. All data collected from the clippings within the sampling frame shall be recorded and analyzed.

(b). Whole Area Harvesting. If whole release area harvesting is chosen as the method for data collection, the entire area shall be harvested and the data recorded and analyzed.

iii. If truckloads of bales are weighed for hay production when a whole area is harvested, at least three truckloads from each 100 acres are weighed. Each truckload should have at least three large round bales or 20 square bales. A sample will consist of the average bale weight per truckload. A statistically adequate sample size must be obtained. Multiply the number of hay bales per area by the average bale weight to obtain total production for that area. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

iv. If performing statistical comparisons for hay production when a whole field is harvested, the weights of either 10 percent or 15 bales, whichever is greater, are converted to pounds per acre (lbs/ac) by taking their average weight and multiplying that figure by the total number of bales, divided by the number of acres harvested. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

v. To determine which bales to weigh, randomly select a number from one to ten then count and weigh every tenth bale thereafter until the minimum number or 10 percent of the bales have been weighed. The first and last bale of any noncontiguous field or site should not be weighed. The bales shall be counted, but if the random number falls on either of the two bales mentioned, either advance one bale or select the bale immediately previous to the last bale produced.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples is equal to or less than the initial minimum number, the initial sampling will satisfy the sampling requirements. If the number of samples needed is greater than the initial minimum number, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Productivity Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s²) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or production for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or production value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and average forage production was insufficient, but close to the standards, the permittee may submit the data to the commissioner to determine if the production was acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

3. Raw yield data from reclaimed areas and raw data from reference areas must first be oven dried to remove moisture, then adjusted by the parish soil survey average yields before statistical comparisons can be made.

E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of and reference plots;
- b. the location of each sample point;
- c. the area covered by the sampling; and
- d. all permit boundaries.

F. Mitigation Plan

1. Ground cover and forage productivity must equal or exceed the standards for reclamation phase III liability release for at least two sampling years during the second through the fifth years following completion of the last augmented seeding. If productivity is not achieved by these dates, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal farming practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new phase III release proposal.

2. If renovation, soil substitution or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

§5425. Revegetation: Standards for SuccessC Post-Mining Land Use of Wildlife Habitat

A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and stocking success for areas developed for wildlife habitat.

2. Pursuant to §5423, ground cover and stocking success on wildlife habitat must be determined on the basis of the following conditions:

a. general revegetation requirements of the approved permit;

b. ground cover; and

c. tree or shrub stocking and survival.

3. The permittee is responsible for measuring and determining ground cover and stocking and submitting this data to the commissioner for evaluation. Procedures for making these determinations are described below.

B. Success Standards and Measurement Frequency

1. Ground Cover

a. Ground cover shall be considered acceptable if it has at least 70 percent density with a 90 percent statistical confidence for the last year of the five year responsibility period.

b. The aggregate of areas with less than 70 percent ground cover must not exceed five percent of the release area. These individual areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of not less than 70 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of not less than 70 percent.

c. No more than 35 percent of the stand can consist of approved species not listed in the permit.

2. Tree and Shrub Stocking Rate

a. The stocking rate for trees and shrubs shall be determined on a permit-specific basis after consultation and approval by the Louisiana Department of Wildlife and Fisheries. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved post-mining land use. When this requirement is met and acceptable ground cover is achieved, the five-year responsibility period shall begin.

b. Tree and shrub stocking rate shall be sampled once during the last year of the five-year responsibility period. The woody plants established on the revegetated site must be equal to or greater than 90 percent of the stocking rate approved in the permit with 90 percent statistical confidence. Trees and shrubs counted shall be healthy and in place for not less than two growing seasons. At the time of final bond release at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility. The permittee must provide documentation of this in the form of paid receipts, reclamation status reports, and normal correspondence.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites,
- ii. a sampling technique unaffected by the sampler's preference, and
- iii. sufficient samples to represent the true mean of the vegetative characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover

type being measured. Additionally, if the release area does not consist of a single unit, at least one sample point must be measured in each noncontiguous unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows.

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable	Not approved in permit

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Sampling Circles (Trees/Shrubs)

i. A sampling circle shall be a round area of known radius. The permittee shall establish a sampling circle at each randomly selected sampling point such that the center of the sampling circle is the random point. Permittee may draw the circle by attaching a string to a stake fixed at the random point and then sweeping the end of the string (tightly stretched) in a circle around the stake. The permittee shall count all living trees and shrubs within each of the sampling circles. In more mature tree/shrub areas, the stakes may need to be extended to elevate the string above the growth.

ii. To count as a living tree or shrub, the tree or shrub must be healthy and must have been in place for at least two years. At the time of liability release, 80 percent must have been in place for three years.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Sampling Circles (Trees/Shrubs) Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s²) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or stocking for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or stocking value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and/or tree and shrub average stocking density is insufficient, but close to the standards, the permittee may submit the data to the Commissioner to determine if the revegetation is acceptable when statistically compared to the

standards using a t-test at a 90-percent statistical confidence interval.

E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of each transect and sampling circle location,
- b. the area covered by the sampling, and
- c. all permit boundaries.

F. Mitigation Plan

1. Ground cover must be greater than or equal to 70 percent coverage and tree and shrub stocking must achieve the revegetation standards by the fifth year of the five-year responsibility period. If these standards are not achieved by this date, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal agronomic practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new Phase III release proposal.

2. If renovation, soil substitution, or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Natural Resources, Office of Conservation, hereby issues this Family Impact Statement: The proposed amendments will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

A public hearing will be held at 10 a.m., April 28, 2003, in the LaBelle Hearing Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, at which time all interested persons will be afforded an opportunity to submit oral and written comments regarding the proposed amendment to LAC 43:XV, (Statewide Order 29-O-1) the Louisiana Surface Mining Regulations.

All interested persons are invited to submit written comments on the proposed amendment. Such comments must be submitted no later than 5 p.m., May 2, 2003, to Mr. Carroll Wascom, Injection and Mining Division, Office of Conservation, Box 94275, Baton Rouge, LA 70804-9275.

Copies of the proposed amendment may be obtained or viewed at the Office of the State Register, 1201 North Third Street, Baton Rouge, LA 70802, phone (225) 342-5015 or through the Department of Natural Resources, Office of

Conservation, 617 North Third Street, Baton Rouge, LA 70802, phone (225) 342-5586.

James H. Welsh
Commissioner of Conservation

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Louisiana Surface Mining Regulations

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

There will be no implementation costs or savings to state or local governmental units since Louisiana presently has surface mining Rules in effect and the proposed change will keep Louisiana's Surface Mining Program in compliance with federal regulations.

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

Louisiana presently receives approximately \$190,000 in federal funds and \$280,000 in state matching funds to administer the Surface Mining Program. Failure to amend the Louisiana Rules to make them consistent with federal regulations would cause the state to lose this federal funding.

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

There will be negligible costs to directly affected persons or surface coal mine operators. Benefits will be realized by persons near the surface mining operations and the state's citizens generally due to the reclamation of the surface mining property according to state and federal standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule amendment will bring the Louisiana Surface Mining Program into compliance with federal Surface Mining Control and Reclamation Act (SMCRA) regulations, will ensure the continued operation of surface mining in Louisiana and will have no significant effect on competition or employment.

Felix J. Boudreaux
Assistant Commissioner
0303#037

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Underwater Obstructions (LAC 43:XI.311)

The Louisiana Office of Conservation hereby proposes to define site clearance application fees in LAC 43:XI.311 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana, particularly Title 30 of the Louisiana Revised Statutes of 1950. The proposed Rule amendment will bring site clearance permit application fees into conformance with the Office of Conservation's current fee schedule.

Title 43
NATURAL RESOURCES

Part XI. Office of Conservation-Pipeline Division
Subpart 2. Underwater Obstructions

Chapter 3. Underwater Obstructions

§311. Abandoned Facilities

A. - E.1. ...

2. A procedural plan for site clearance verification of platform, well or structure abandonment (§311.E.1.b or §311.E.1.c) shall be developed by the lessee and submitted to the commissioner of conservation for approval with the permit application for platform or structure removal. Vessels used for site clearance verification operations in territorial seas shall be equipped with a navigational positioning system capable of providing position accuracy of ±30-feet. The navigational positioning system proposed for use must be identified in the procedural plan. Vessels used for site clearance verification operations in coastal waters and shallow (5 feet or less below mean sea level) territorial seas are not required to be equipped with a navigational system provided that alternate methods for insuring proper positioning during site clearance verification operations are described in the plan submitted for approval. Each plan and application shall be accompanied by a filing fee. The fee shall be the same as the public hearing fee set forth in LAC 43:XIX, Chapter 7.

E.2.a. - 3.f. ...

AUTHORITY NOTE: Promulgated in accordance with RS 30:4.D-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:702 (July 1985), amended LR 18:1412 (October 1992), LR 29:

Family Impact Statement

1. The effect of these rules on the stability of the family. These Rules will have no effect on the stability of the family.

2. The effect of these rules on the authority and rights of parents regarding the education and supervision of their children. These Rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of these rules on the functioning of the family. These Rules will have no effect on the functioning of the family.

4. The effect of these rules on family earnings and family budget. These Rules will have no effect on family earnings and family budget.

5. The effect of these rules on family earnings and family budget. These Rules will have no effect on the functioning of the family.

6. The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules. These Rules will have not effect on the ability of the family or local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments to Mariano G. Hinojosa, Louisiana Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. Written comments will be accepted through April 25, 2003.

All interested parties will be afforded the opportunity to submit comments regarding these new and amended regulations at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 5 p.m., Friday, April 25, 2003, at the following address: Office of

Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA, 70804, Re: Docket No. PL 03- 009.

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 30:557.G, notice is hereby given that the Commissioner of Conservation will conduct a public hearing at 9 a.m., Monday, April 28, 2003, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA. A copy of the proposed regulations may be obtained by contacting Mariano Hinojosa at 225-342-5519 or by writing the Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804.

All persons having interest in the aforesaid shall take notice thereof.

James H. Welsh
Commissioner of Conservation

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Underwater Obstructions

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

There should be no additional costs or savings to local governmental units. This action amends the site clearance regulations regarding permit application fees.

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

Under the proposed amendment, site clearance application fees will increase from \$600 to \$755. About 100 site clearance applications are reviewed annually. The fee increase will result in additional revenue of approximately \$15,000.

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

The proposed amendment will increase the filing fee for site clearance permits from \$600 to \$755.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

James H. Welsh
Commissioner
0303#027

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Office of Alcohol and Tobacco Control

Prohibition of Certain Unfair Business Practices
(LAC 55:VII.317)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:792 and 26:150, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.317 to clarify the restrictions relative to the relationship between suppliers and retailers relative to internet website advertising.

The proposed amendment provides that no supplier of alcohol beverages shall directly or indirectly furnish or pay for any advertising with respect to any one or more retail licensees by means of radio or similar media; but for purposes of §317.C.2.j, internet websites including related

emails or direct mail shall not be construed as "similar media."

**Title 55
PUBLIC SAFETY**

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 3. Alcoholic Beverages

§317. Prohibition of Certain Unfair Business Practices

A. - C.2.j.iii. ...

k. No supplier of alcohol beverages shall directly or indirectly furnish or pay for any advertising with respect to any one or more retail licensees by means of radio or similar media. For purposes of C.2.j above, internet websites including related emails or direct mail shall not be construed as "similar media."

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:75.C, R.S. 26:150, R.S. 26:275.B, R.S. 26:287, R.S. 26:792 and R.S. 26:793.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Alcoholic Beverage Control, LR 4:464 (November 1978), amended LR 5:11 (January 1979), amended by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 17:607 (June 1991), LR 20:671 (June 1994), amended by the Department of Revenue and Taxation, Office of Alcoholic Beverage Control, LR 22:116 (February 1996), amended by the Department of Revenue, Office of Alcohol and Tobacco Control LR 26:2631 (November 2000), LR 28:1484 (June 2002), LR 29:

Family Impact Statement

1. The effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Prohibition of Certain Unfair Business Practices**

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There should be no effect on revenue collections of state or local governmental units as a result of the proposed Rule

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

Proposed LAC 55:VII.317.C.2.k is to clarify restrictions relative to relationship between suppliers and retailers relative to internet website advertising.

Content of Rule will clarify Louisiana law relative to prohibition of advertising furnished by suppliers of alcohol beverages for retailers of such beverages with respect to any means of radio or similar media; and to further clarify that such prohibition shall not be by way of phrase "similar media" be extended to include websites.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule should have no effect on competition or employment.

Murphy J. Painter
Commissioner
0303#097

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

Responsible Vendor Program Servers
(LAC 55:VII.507)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:933, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.507 to require that those who seek certification and enrollment as a responsible vendor must be in compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be grounds for denying an application for, or an application for the renewal of, any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

**Title 55
PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control
Subpart 1. Beer and Liquor**

Chapter 5. Responsible Vendor Program

§507. Servers

A. - B.3. ...

4. The server shall meet compliance with R.S. 37:2951.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 29:

Family Impact Statement

1. The effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter
Commissioner

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

RULE TITLE: Responsible Vendor Program C Servers

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those who apply to become approved servers of alcohol beverages are induced to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission in order to obtain such server permits.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule could have an effect on employment relative to the possible denial of applicants for server permits.

Murphy J. Painter
Commissioner
0303#095

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

Responsible Vendor Program C Training
(LAC 55:VII.509)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:933, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.509 to require that those who seek certification and providers and trainers under the Responsible Vendor Program must be in compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be grounds for denying an application for, or an application for the renewal of, any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

**Title 55
PUBLIC SAFETY**

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 5. Responsible Vendor Program

§509. Training; Providers and Trainers

A. - D.4. ...

5. A person or business entity that applies to become an approved provider or trainer for alcohol server education shall meet compliance with R.S. 37:2951 and the owners of any such a business entity meet compliance with R.S. 37:2951.

E. - K.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 29:

Family Impact Statement

1. The effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Responsible Vendor ProgramC Training**

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those who apply to become approved providers for alcohol server education are induced to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission in order to obtain such certification.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule could have an effect on competition or employment relative to the possible denial of those who apply to become approved providers for alcohol server education as a result of their failure to comply with R.S. 37:2951.

Murphy J. Painter
Commissioner
0303#094

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

Responsible Vendor ProgramC Vendors
(LAC 55:VII.505)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:933, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.505 to require that those who seek certification and enrollment as a responsible vendor must be in compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be grounds for denying an application for, or an application for the renewal of any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 5. Responsible Vendor Program

§505. Vendors

A. - A.4.b. ...

5. The vendor shall meet compliance with R.S. 37:2951.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1949 (October 1998), amended LR 25:879 (May 1999), LR 29:

Family Impact Statement

1. The effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter
Commissioner

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

RULE TITLE: Responsible Vendor ProgramC Vendors

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those applying for Responsible Vendor Certification are in a position to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission and are thereby induced to do so.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule could have an effect on competition or employment relative to the possible denial of those who seek certification and enrollment as a responsible vendor as a result of their failure to comply with R.S. 37:2951.

Murphy J. Painter
Commissioner
0303#096

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

Tobacco Permits (LAC 55:VII.3105)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:922, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.3105 to require that any applicant for a tobacco license shall meet compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be

grounds for denying an application for, or an application for the renewal of, any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 2. Tobacco

Chapter 31. Tobacco Permits

§3105. Additional Information for Licenses;

Partnership, Corporation, Limited Liability Company (LLC)

A. - B. ...

C. Any applicant for a tobacco license shall meet compliance with R.S. 37:2951.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:922 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1320 (July 1998), amended LR 29:

Family Impact Statement

1. The effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter
Commissioner

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

RULE TITLE: Tobacco Permits

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those applying for a tobacco license are induced to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission in order to receive such license.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule could have an effect on competition or employment relative to the possible denial of applicants for a tobacco license as a result their failure to comply with R.S. 37:2951.

Murphy J. Painter
Commissioner
0303#093

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of the Secretary**

**Penalty Waiver
(LAC 61:III.2101)**

Under the authority of R.S. 47:1603 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary, proposes to amend LAC 61:III.2101 pertaining to a penalty waiver for delinquent filing or delinquent payment.

The purpose of this Rule is to inform the public of the documentation required when submitting requests for waiver of delinquent filing or late payment penalty and of factors that will be considered by the Department of Revenue in evaluating waiver requests. Title 47 Section 1603 provides that if the failure to file on time or the failure to timely remit the full amount due is not due to the negligence of the taxpayer, but is due to other causes set forth in written form and considered reasonable, the secretary may waive the penalty in whole or in part. When the penalty exceeds \$5,000, the waiver must be approved by the Board of Tax Appeals.

Title 61

REVENUE AND TAXATION

Part III. Department of Revenue; Administrative Provisions and Miscellaneous

Chapter 21. Interest and Penalties

§2101. Penalty Waiver

A. The secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely

remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed one hundred dollars, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting documentation. The affidavit must be signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. In lieu of an affidavit, the taxpayer may submit a Request for Waiver of Penalties for Delinquency Form signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the Request for Waiver of Penalties for Delinquency Form may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. The Request for Waiver of Penalties for Delinquency Form must be accompanied by any supporting documentation.

B. Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver, fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C. In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered separately in making this determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1603.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 27:866 (June 2001), LR 29:

Family Impact Statement

The proposed amendment of LAC 61:III.2101, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Linda Denney, Miscellaneous Taxes & Regulatory Services, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802-5428 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m. April 23, 2003. A public hearing will be held on April 24, 2003, at 9:30 a.m. at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Penalty Waiver**

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

Implementation of this proposed regulation, which establishes the documentation required to be submitted to the Department of Revenue for delinquent filing or late payment penalty waiver requests, will have no impact on the agency's costs.

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

There should be no effect on revenue collections of state or local governmental units as a result of this proposed regulation.

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

Taxpayers whose penalties exceed \$100 may incur a cost for having a document notarized. This amount is undeterminable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0303#040

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

The Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to amend the Louisiana Administrative Code, Title 48, Part I, Subpart 3, Licensing and Certification. This Rule is mandated by R.S. 46:1401 et seq. These standards are being revised to supersede any previous regulations heretofore published.

Title 48

PUBLIC HEALTH – GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 53. Day Care Centers

§5301. Purpose

A. It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to ensure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to ensure protection of all individuals under care in child care facilities and placement agencies and to encourage and assist in the improvement of programs.

B. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate. This Chapter shall not give the Department of Social Services jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any curriculum or instruction of a school or facility sponsored by a church or religious organization so long as the civil and human rights of the clients and residents are not violated.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5302. Authority

A. Legislative Provisions

1. The State of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child care centers. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq. (Act 367 of 1956 and amended by Act 152 of 1962, Act 241 of 1968, Act 290 of 1976, Act 678 of 1977, Act 409 of 1978, Act 286 of 1985, Act 1463 of 1997 and Act 1237 of 1999) making mandatory the licensing of all child care facilities and child placing agencies, including child care centers.

2. In accordance with Act 1237 of the 1999 Legislative Session, a child care center is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of 7 or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least 12 1/2 hours in a continuous 7-day week. Related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver. A recognized religious organization which is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code and does not operate more than 24 hours in a continuous 7-day week is not considered a child care center.

B. Penalties

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency shall be licensed.

2. The law provides a penalty for operation of a center without a valid license. The penalty for operation without a valid license is a fine of not less than \$75 nor more than \$250 for each day of operation without a license.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services, through its duly authorized agents, to inspect at regular intervals not to exceed one year or as deemed necessary by the department and without previous notice all child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401 et seq.)

2. Whenever the department is advised or has reason to believe that any person, agency or organization is operating a non-exempt child care facility without a license, the department shall make an investigation to ascertain the facts.

3. Whenever the department is advised or has reason to believe that any person, agency or organization is operating in violation of the Child Care Center Class A Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment of children coming to the attention of the Department of Social Services will be investigated.

D. The Louisiana Advisory Committee

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class "A" facilities ("New" meaning the first regulations written after Act 286 of 1985);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, Rules, and regulations for Class "A" facilities at least every three years; and

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class "A" license.

2. The committee is composed of 19 voting members, appointed by the governor, including provider and consumer representation from all types of child care services, the educational and professional community and the director of the Bureau of Licensing who serves as an ex-officio member.

E. Waivers

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by

the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), IR 24:2345 (December 1998), LR 29:

§5303. Procedures

A. Application

1. Anyone applying for a license after the effective date of these standards shall meet all of the requirements herein.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. To do so, the following steps should be followed:

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area where the facility is to be located. Standards from Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; and City Fire Department (if applicable) should be obtained.

b. After securing building, obtain an application form issued by:

Department of Social Services
Bureau of Licensing
P. O. Box 3078
Baton Rouge, LA 70821-3078
Phone: (225) 922-0015
Fax: (225) 922-0014

Web address: www.dss.state.la.us/offos/html/licensing.html

c. The completed application shall indicate Class "A" license. Anyone applying for State or Federal funding shall apply for Class "A" license. Licensure fees are required to be paid by all providers. A Class "A" license may not be changed to a Class "B" license if revocation procedures are pending.

d. After the center's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a center:

- i. Office of Public Health, Sanitarian Services;
- ii. Office of the State Fire Marshal, Code Enforcement and Building Safety;
- iii. Office of City Fire Department (if applicable);
- iv. Zoning Department (if applicable); and
- v. City or Parish Building Permit Office.

e. After the application has been received by the Bureau of Licensing, the bureau will request the Office of State Fire Marshal, Office of City Fire Department (if applicable), Office of Public Health and any known required local agencies to make an inspection of the location, as per their standards. However, it is the applicant's responsibility to obtain these inspections and approvals.

f. A licensing specialist will visit the center to conduct a licensing survey.

g. A license will be issued on an initial application when the following items have been met and written verification is received by the Bureau of Licensing:

- i. state fire approval;
- ii. city fire approval (if applicable);
- iii. health approval;
- iv. zoning approval (if applicable);
- v. full licensure fee paid;
- vi. director meets qualifications;

- vii. director designee meets qualifications (if applicable);
- viii. three current, positive, signed references on director;
- ix. three current, positive, signed references on director designee (if applicable); and
- x. licensure survey verifying compliance with all minimum standards.

3. When a center changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in Section 5303.A.2.g shall be submitted, except references and director/director designee qualifications if the director/director designee remains the same.

4. When a center changes ownership, the following information must be submitted prior to the sale or day of the sale in order for a license to be issued:

- a. a new application;
- b. full licensure fee;
- c. current health and state fire approval;
- d. city fire approval (if applicable);
- e. documentation of director qualifications as listed in Section 5310.A and B;
- f. letter from previous owner noting sale of child care business;
- g. documentation of director designee qualifications as listed in Section 5310.A and B (if applicable);
- h. three current, positive signed references on the director;
- i. three current, positive, signed references on director designee (if applicable); and
- j. copy of bill of sale.

NOTE: If the above information is not received prior to the sale or day of the sale, the new owner must not operate until a license is issued. When the application is received, it will be treated as an initial application rather than a change of ownership.

5. When a center changes class type, the following information shall be submitted to the bureau prior to the issuance of the new license:

- a. written request from the provider;
- b. full licensure fee;
- c. documentation of commercial liability insurance in accordance with Section 5305.B and Section 5331.J; and
- d. documentation of director/director designee qualifications as listed in Section 5310.A and B.

6. A license shall be valid only for the address on the application to a particular owner and is not transferable to another person or location or subject to sale. Two licenses shall not be issued simultaneously for the same physical address.

7. When a business is sold, discontinued, the operation has moved to a new location, or the license has been revoked, the current license immediately becomes null and void.

8. All new construction or renovation of a center requires approval from the agencies listed in Section 5303.A.2.d and the Bureau of Licensing prior to occupying the new space.

9. The bureau is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked due

to provider's failure to maintain compliance with minimum standards.

B. Fees

1. All fees shall be paid by certified check or money order only and are non-refundable.

2. An application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee which is due prior to licensure of the provider. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all change of ownership applications. The full licensure fee shall be paid for all class changes.

3. Annual licensure fees are required prior to renewal of the license. License fee schedules (based on capacity) are listed below:

15 or fewer:	\$ 25
16 - 50:	\$100
51 - 100:	\$175
101 or more:	\$250

4. Other licensure fees:

a. A replacement fee of \$25 for any provider replacing a license when changes to the license are requested, e.g., change in capacity, name change, age range change, transportation change. (There is no processing charge when the request coincides with regular renewal of license.)

i. Capacity increase is effective when the following is received and approved by the bureau: written, signed request; fee; state fire approval; city fire approval (if applicable); state health approval; and measurement of the additional space by the bureau.

ii. Transportation addition is effective when the following is received and approved by the bureau: written, signed request; fee; copy of appropriate driver's license(s); and insurance.

iii. Name change, age range change, and addition of nighttime care is effective when the request and fee are received and approved.

iv. Change in director/director designee does not require a fee; however, documentation of qualifications and three reference letters are needed in order to process the request.

b. A processing fee of \$5 for issuing a duplicate license with no changes.

C. Relicensing

1. The annual relicensing survey is similar to the original licensing survey. Documentation of the previous 12 months' activity shall be available for review. The director will have an opportunity to review the survey deficiencies (if any).

2. A license is issued for a period of up to one year based upon provider's compliance with minimum standards. Before expiration of the license, re-inspections by the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; City Fire (if applicable) and the Bureau of Licensing shall be required.

3. If the survey reveals that the provider is not meeting minimum requirements, a recommendation will be made to the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies that the license be revoked or not renewed.

4. The bureau shall be notified prior to making changes which may have an effect upon the license, e.g., age range of children served, usage of indoor and outdoor space, director, hours/months/days of operation, transportation, etc.

D. Denial, Revocation or Non-Renewal of License. An application for a license may be denied, or a license may be revoked, or renewal denied, for any of the following reasons:

1. violation of any provision of R.S. 46:1401 et seq. or failure to meet any of the minimum standards, Rules, regulations or orders promulgated by the Department of Social Services;

2. cruelty or indifference to the welfare of the children;

3. conviction of or a plea of guilty or nolo contendere of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim,

a. or, if the applicant is a firm or corporation, any of its board members or officers;

b. or, the person designated to manage or supervise the center;

4. hiring or continued employment of any individual (paid or non-paid staff) convicted of a felony or a plea of guilty or nolo contendere of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim;

5. if the owner or director of the center is not reputable;

6. if the owner, director or a member of the staff is temperamentally or otherwise unsuited for the care of the children in the center;

7. history of noncompliance;

8. failure of the owner of the center to hire a qualified director;

9. disapproval from any agency whose approval is required for licensure;

10. non-payment of licensure fee and/or failure to submit application for renewal prior to the expiration of the current license;

11. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse and/or neglect if the owner is responsible or if the employee who is responsible remains in the employment of the provider;

12. the center is closed and there are no plans for immediate re-opening and no means of verifying compliance with minimum standards for licensure;

13. any act of fraud such as falsifying or altering documents required for licensure;

14. provider refuses to allow the bureau to perform mandated duties, i.e., denying entrance to the center, lack of cooperation for completion of duties, etc.;

15. presence or use of any recalled product by the provider that is listed in the newsletters issued by the Office of the Attorney General; or

16. failure to attend any mandatory training session offered by the bureau.

E. Appeal Procedure. If the license is refused, revoked or denied because the provider does not ensure the compliance with the minimum requirements for licensure, the procedure is as follows.

1. The Department of Social Services, Bureau of Licensing, shall advise the director by certified letter of the

reasons for refusal, revocation, or denial and the right of appeal.

2. The director may appeal this decision by submitting a written request with the reasons to the Secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P. O. Box 2944, Baton Rouge, LA 70821-9118. This written request shall be post-market within 30 days of the director's receipt of the above notification.

3. The Bureau of Appeals shall set a hearing within 30 days after receipt of such a request. An appeals hearing officer shall conduct the hearing. Within 90 days after the date the appeal is filed, the hearing officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the appeal is denied, the provider shall terminate operation of the center immediately.

4. If the provider continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the center is located for injunctive relief.

F. Required Notification. Within 24 hours or the next workday, the director shall notify the bureau of the following reportable incidents. A verbal report is to be followed by a written report:

1. any death of a child while in the care of the provider;

2. any illness or injury requiring hospitalization or professional medical attention other than first aid of a child while in the care of the provider;

3. any fire;

4. any structural disaster;

5. any emergency situation that requires temporarily relocating children;

6. any unusual situation which affects the care of a child or children, e.g. child left unsupervised in the center, on the van, in play yard, on field trip, extended loss of power, water service, gas, etc.; or

7. any child leaving the center unsupervised or with an unauthorized person.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5304. Definitions

Anniversary Center's licensure year, determined by the month in which the initial license was issued to the provider/center and in which the license is eligible for renewal each year.

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

Capacity the number of children the provider is licensed to care for at any given time based on usable indoor and outdoor square footage as determined by the bureau.

Center a child care facility as defined in Section 5302.A.1.

Center Staff all full or part-time paid or non-paid staff who perform routine services for the child care center and have direct or indirect contact with children at the center. Center staff includes the director, child care staff, and any

other employees of the center such as the cook, housekeeper, driver, substitutes, and foster grandparents excluding extra-curricular personnel.

Change of LocationCchange of physical address of facility.

Change of OwnershipCtransfer of ownership to someone other than the owner listed on the initial application. Ownership of the center business, not the building, determines the owner. Sale of a corporation also constitutes a change of ownership. Leasing of a child care business is not considered a change of ownership, but an initial application.

Clock HourCinvolvement or participation in a learning situation for 60 minutes.

Comparable SettingCpre-k, kindergarten, first grade, or a registered family day home.

DepartmentCthe Department of Social Services of the State of Louisiana.

Direct SupervisionCvisual contact at all times.

DirectorC

Center DirectorCthe on-site staff who is responsible for the day-to-day operation of the center as recorded with the Bureau of Licensing. For the purpose of these regulations the term director means center director or director designee, if applicable.

Director DesigneeCthe on-site individual appointed by the director when the director is not an on-site employee at the licensed location. This individual shall meet director qualifications.

Executive DirectorCthe owner or administrator. If on-site and responsible for the management, administration and supervision of the center, the executive director is also the center director. If not on-site or not functioning as center director, the executive director maintains responsibility for the management, administration and supervision of the center(s) through a center director or director designee.

DisciplineCthe ongoing positive process of helping children develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

DocumentationCwritten evidence or proof, signed and dated by parties involved (director, parents, staff, etc.), on site and available for review.

Existing CenterCa provider with a valid license at a particular location prior to the effective date of these standards.

Extra-Curricular/Personnel/Therapeutic ProfessionalsC individuals who are not employees of the center, but who come to the center to provide therapy, services, or enrichment activities for an individual child or group of children. Examples: computer instructor, dance instructor, librarian, tumble bus personnel, therapeutic personnel (occupational therapist, physical therapist, speech therapist), nutritionist, early interventionist, nurse.

GroupCthe number of children assigned to a caregiver or team of caregivers occupying an individual classroom or well-defined space within a larger room on a consistent or daily basis.

MedicationCall internal and external drugs, whether over-the-counter or prescribed. Medications include oral, inhalant, topical ointments, sprays, creams, etc.

Montessori SchoolCa facility accredited as a Montessori School by the Board of Elementary and Secondary Education under La. R.S. 17:3401 et seq.

Nighttime CareCcare provided after 9:00 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

Owner or ProviderCa public or private organization or individual who delivers child care services for children.

ParentCparent(s) or guardian with legal custody of the child.

PostedCprominently displayed in a conspicuous location in an area accessible to and regularly used by parents.

Shall or MustCmandatory.

ShouldCurged, advised or may.

Staff-in-ChargeCthe on-site staff appointed by the director as responsible for supervising the operation of the center during the temporary absence of the director.

Student TraineeCan individual who observes in the center as a course requirement, is never left alone with children, nor counted in the child/staff ratio.

Temporary AbsenceCabsence for errands, conferences, etc.

TransportationCarranging or providing transportation of children for any reason including field trips and transportation by contract.

Water ActivityCa water-related activity in which children, under adult supervision, are in, on, near, or immersed in a body of water such as swimming pools, wading pools, water parks, lakes, rivers or beaches, etc.

VisitorCanyone who enters the facility other than center staff, therapeutic professionals, extracurricular personnel, and in the case of a church or school, any other routine employees such as a pastor, principal, teacher, etc.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5305. General Requirements

A. A Louisiana child care license with current information and current expiration date shall be on display in an area accessible to and regularly used by parents and visitors, except for church affiliated centers (R.S. 46:1408.D) that choose to keep the license on file and available upon request.

B. The provider shall maintain in force at all times current commercial liability insurance for the operation of a center to ensure medical coverage for children in the event of accident or injury. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, physical address of the facility, name of the insurance company, policy number, period of coverage and explanation of the coverage.

C. Parents shall not be required to waive the provider's responsibility.

D. The provider shall have documentation of yearly sanitation inspection and current approval from the Office of Public Health, Sanitarian Services. If food is catered or transported, approval is needed from the health department.

E. The provider shall have documentation of yearly safety inspection and current approval from the Office of State Fire Marshal.

F. The provider shall have documentation of yearly safety inspection and current approval from the City Fire Department (if applicable).

G. The provider shall have certificate of occupancy (zoning), if applicable.

H. A daily attendance record for children, completed by the parent or center staff, including the time of arrival and departure of each child and the name of the person to whom the child was released, shall be maintained. This record shall accurately reflect the children on the child care premises at any given time. If the record is completed by center staff, that individual shall write the first and last name of the person to whom the child was released and sign his/her own name. Children who leave and return to the center during the day shall be signed in/out. A computerized sign in/out procedure is acceptable if the record accurately reflects the time of arrival and departure as well as the name of the person to whom the child was released.

I. A daily attendance record for staff, including the director/owner, to include the time of arrival and departure shall be maintained. Direct care staff shall document in/out when not on the child care premises. This record shall accurately reflect persons on the child care premises at any given time.

J. The provider shall have an individual immediately available in case of emergency. The name and telephone number of the emergency person shall be posted near the telephone.

K. Any visitor to the center shall be accompanied by a staff person at all times.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5306. Policies and Procedures Related to Children

A. Prior to admission, the director, in consultation with the parent, shall determine that the individual needs of each child can adequately be met by the center's program and facilities.

B. A schedule of the day's plan of activities, allowing for flexibility and change, shall be posted. The program of activities shall be age-appropriate and shall be adhered to with reasonable closeness, but shall accommodate and have due regard for individual needs and differences among the children. The program shall provide time and materials for both vigorous and quiet activities for children to share or to be alone, indoor and outdoor play, and rest. Regular time shall be allowed for routines such as washing, lunch, rest, snacks and putting away toys. Active and quiet periods shall be alternated so as to guard against over-stimulation of the child.

C. Programs/movies with violent or adult content (including soap operas) shall not be permitted in the presence of children.

D. Children five years and younger shall have a daily rest period of at least one hour. Providers that serve children in half-day programs are not required to schedule napping periods for these children.

E. While awake, children shall not remain in a crib/baby bed, swing, highchair, carrier, playpen, etc. for more than 30 consecutive minutes.

F. Discipline. The provider shall establish a policy in regard to methods of discipline. Any form of punishment that violates the spirit of this standard of discipline, even though it may not be specifically mentioned as forbidden, is prohibited. This written posted policy shall clearly state ALL types of positive discipline that are used and that the following methods of discipline are prohibited:

1. No child shall be subject to physical punishment, corporal punishment, verbal abuse or threats.

2. Cruel, severe, unusual, or unnecessary punishment shall not be inflicted upon children.

3. Derogatory remarks shall not be made in the presence of children about family members of children in care or about the children themselves.

4. No child or group of children shall be allowed to discipline another child.

5. When a child is removed from the group for disciplinary reasons, he shall never be out of sight of a staff member.

6. No child shall be deprived of meals or snacks or any part thereof for disciplinary reasons.

G Abuse and Neglect

1. As mandated reporters, all center staff shall report any suspected abuse and/or neglect of a child in accordance with R.S. 14:403 to the local child protection agency. This written policy as well as the local child protection agency's telephone number shall be posted.

H. Complaint Procedure

1. Parents shall be advised of the licensing authority of the bureau along with the current telephone number and address. Parents shall also be advised that they may call or write the bureau should they have significant, unresolved licensing complaints. This written policy as well as the current telephone number and address of the bureau shall be posted.

I. Open Door Policy

1. Parents shall be informed that they are welcome to visit the center anytime during regular hours of operation as long as their child is enrolled. This written policy shall be posted.

J. Non-discrimination Policy

1. Discrimination by child care providers on the basis of race, color, creed, sex, national origin, handicapping condition or ancestry is prohibited. This written policy shall be posted.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5307. Children's Records

A. A record shall be maintained on each child to include:

1. child's information form (mastercard) listing the child's name, birth date, sex, date of admission, name and phone number of child's physician and dentist, dietary restrictions, and allergies; signed and dated by the parent;

2. parental authorization to secure emergency medical treatment;

3. signed agreements between the provider and the parent for each child giving permission to release the child to a third party listed by the parent including any other child care facilities or transportation services. A child shall never be released to anyone unless authorized in writing by the parent;

4. signed agreements between the provider and the parent to transport the child. Daily trip authorization shall include name of child, type of service (i.e., to and from home, to and from school), parent's signature and date.

B. The provider shall maintain the confidentiality and security of all children's records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to any unauthorized person.

C. The provider shall obtain written, informed consent from the parent prior to releasing any information, recordings and/or photographs from which the child might be identified, except for authorized state and federal agencies.

D. The provider utilizing any type of recordings or taping of children including but not limited to digital recordings, videotaping, audio recordings, web cam, etc. shall obtain documentation signed and dated by the parent indicating their awareness of such recordings.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5308. Retention of Records

A. Documentation of the previous 12 months' activity shall be available for review. Records shall be accessible during the hours the facility is open and operating.

B. For licensing purposes, children's information shall be kept on file a minimum of one year from date of discharge from the center.

C. For licensing purposes, personnel records shall be kept on file a minimum of one year from termination of employment from the center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5309. Required Staff

A. Each center shall have a qualified director who is an on-site full-time employee at the licensed location and is responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental

concerns and ensuring that minimum licensing requirements are met. When the director is not an on-site full-time employee at the licensed location, there shall be a qualified director designee who is an on-site full-time employee responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental concerns and ensuring that minimum licensing requirements are met.

B. When the director or director designee is not on the premises due to a temporary absence, there shall be an individual appointed as staff-in-charge who is at least 21 years of age. This staff shall be given the authority to respond to emergencies, inspections/inspectors, parental concerns, and have access to all required information.

C. If the number of children in care exceeds 42, the director/director designee's duties shall consist only of performing administrative functions.

D. There shall be regularly employed staff who are capable of fulfilling job duties of the position to which they are assigned.

E. Adequate provisions for cooking and housekeeping duties shall be provided. These duties shall not interfere with required supervision of children or required child/staff ratios.

F. There shall be provisions for substitute staff who are qualified to fulfill duties of the position to which they are assigned.

G. Child care staff shall be age 18 years or older. The provider may, however, include in the staff-child ratio, a person 16 or 17 years old who works under the direct supervision of a qualified adult staff. No one under age 16 shall be used as child care staff.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5310. Director Qualifications

A. The director/director designee shall be at least 21 years of age.

B. The director/director designee shall have documentation of at least one of the following upon date of hire as director or director designee:

1. a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education and one year of experience in a licensed child care center or comparable setting, subject to approval by the bureau;

2. an Associate of Arts degree in child development or a closely related area, and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

3. a National Administrator Credential as awarded by the National Child Care Association, and one year experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

4. a Child Development Associate Credential (CDA) and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

5. diploma from a post secondary technical early childhood education training program approved by the

Board of Regents or child care education certificate program, plus one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

6. Three years of experience as a director or staff in a licensed child care center, or comparable setting, subject to approval by the bureau; plus six credit hours in child care, child development, or early childhood education or 90 "clock hours" of training approved by the bureau. Up to three credit hours or 45 clock hours may be in management/administration education.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5311. Personnel Records

A. A record for each paid and non-paid staff person, including substitutes and foster grandparents shall be on file at the center. Personnel record shall include:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth;
- c. address and telephone number;
- d. previous training/work experience;
- e. educational background; and
- f. employee's starting and termination date;

2. documentation of three current, positive reference checks or telephone notes signed and dated. These references shall be obtained from persons not related to the employee;

3. written job descriptions for every position at the center;

4. a written statement of good health signed by a physician or designee. Health statement dated within three months prior to offer of employment or within one month after date of employment is acceptable. A health statement is required every three years. Originals shall be presented upon request;

5. documentation of a satisfactory criminal record check, as required by R.S.15:587.1. Provider shall request this clearance prior to the employment of any center staff. A criminal record clearance is not transferable from one employer to another. No staff with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim shall be employed in a Class "A" child care center.

B. The following information shall be kept on file for therapeutic professionals and extracurricular personnel, e.g. computer instructor, dance instructor, librarian, tumble bus personnel, etc.:

1. documentation of a satisfactory criminal record check, as required by R.S.15:587.1. Provider shall request this clearance prior to individual being present in the center. No individual with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim shall be in a Class "A" child care center. Note:

Individuals employed by the school system may have on file at the center, a letter from school system administrative staff documenting that a criminal record check has been completed through Louisiana State Police;

2. documentation of their presence at the facility to include:

- a. name;
- b. date of visit;
- c. arrival and departure times; and
- d. reason in center.

C. The following information shall be kept on file at the center for each student trainee:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth; and
- c. address and telephone number;

2. job descriptions to include job duties to be performed and name of supervisor;

3. documentation of their presence at the facility to include:

- a. name;
- b. date of visit;
- c. arrival and departure times; and
- d. reason in center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5312. Staff Development and Training

A. Orientation Training

1. Within one week of employment and prior to having sole responsibility for a group of children, each staff member, including substitutes and foster grandparents, shall receive orientation training to include the following topics:

- a. center policies and practices including health and safety procedures;
- b. emergency and evacuation plan;
- c. supervision of children;
- d. discipline policy;
- e. job description;
- f. individual needs of the children enrolled;
- g. detecting and reporting child abuse and neglect;
- h. current Child Care Class "A" Minimum Licensing Standards; and
- i. confidentiality of information regarding children and their families.

2. This training shall be followed by four days of supervised work with children. Documentation shall consist of a statement/checklist in the staff record signed and dated by the staff person and director, attesting to having received such orientation training, and the dates of the supervised work with children.

B. Quarterly Training

1. The director shall conduct, at a minimum, one staff training session/meeting every three months. Documentation shall consist of the date of the training session, training topics, and signatures (not initials) of all staff in attendance.

C. Annual Review

1. All staff, including substitutes and foster grandparents, shall have a signed and dated checklist/statement that the following topics are annually reviewed:

- a. center policies and practices including health and safety procedures;
- b. emergency and evacuation plan;
- c. supervision of children;
- d. discipline policy;
- e. job description;
- f. individual needs of the children enrolled;
- g. detecting and reporting child abuse and neglect;
- h. current Child Day Care Class "A" Minimum Standards;
- i. confidentiality of information regarding children and their families.

D. Continuing Education

1. The director shall provide opportunities for continuing education of staff through attendance at child care workshops or conferences, for paid and non-paid staff who are left alone with children, or who have supervisory or disciplinary authority over children. The child care staff, excluding foster grandparents, shall obtain 12 clock hours of approved training per center's anniversary year in job related subject areas. At least three of the 12 clock hours of training for directors/director designees shall be in administrative issues. Documentation shall consist of attendance records or certificates received by staff. This is in addition to the required training hours from the Department of Health and Hospitals, pediatric first aid and infant/child/adult CPR. Medication administration training by a Child Care Health Consultant may count toward fulfilling three of the mandated 12 hours of continuing education training. All training shall have prior approval by the Department of Social Services. Original certificates shall be made available upon request.

2. Cooks or drivers who are neither left alone with children, nor have supervisory nor disciplinary authority over children shall complete at least three clock hours of training in job related topics per center's anniversary year.

E. CPR and First Aid

1. A minimum of at least 50 percent of all staff on the premises and accessible to the children at all times shall have documentation of current infant/child/adult certification in CPR. Original cards shall be made available upon request. This training shall be approved by the Department of Social Services prior to acceptance.

2. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in approved infant/child/adult CPR in each building and on each floor of the center.

3. A minimum of at least 50 percent of all staff on the premises and accessible to children shall have documentation of current pediatric first aid certification. Original cards shall be made available upon request. This certification shall be approved by the Department of Social Services prior to acceptance.

4. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in approved pediatric first aid in each building and on each floor of the center.

5. At least one staff in each vehicle (center provided or contract) shall have documentation of current infant/child/adult CPR certification and pediatric first aid certification.

6. At least 50 percent of the supervising staff on the field trip shall have documentation of current infant/child/adult CPR certification and pediatric first aid certification.

7. Non-vehicular excursions shall require at least one staff in attendance and accessible to children at all times with documented current certification in infant/child/adult CPR and pediatric first aid.

F. Emergency Procedures

1. The director shall ensure that written procedures for emergencies and evacuation as appropriate for the area in which the center is located such as fire, flood, tornado, hurricane, chemical spill, train derailment, etc. are available.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5313. Water Activities

A. The provider shall obtain written authorization from the parent for the child to participate in any water activity. The statement shall describe all types of water activities provided and the authorization shall be updated at least annually and shall list the child's name, type of water activity, location of water activity, parent's signature and date.

B. On-site and off-site wading/swimming pool, or other water activities shall require at least two staff or other supervising adults to be trained in infant/child/adult CPR and pediatric first aid. One supervising adult shall be trained in an approved community water safety course. Providers who have wading pools with a depth of less than two feet shall not be required to have a staff with community water safety training.

1. If children are taken to off-site water activities, documentation shall be on file at the center that the director has verified that the supervising adult meets the above requirements or the lifeguard on duty is currently certified.

2. The provider shall ensure that appropriate water safety devices are used when children are participating in water activities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29

§5315. Required Child/Staff Ratios

A. Child/staff ratios are established to ensure the safety of all children. Only those staff members directly involved in child care and supervision shall be considered in assessing

child/staff ratio. Required staff shall be present in the center to meet the child/staff ratios as indicated below; however, there shall always be a minimum of two child care staff present during hours of operation when children are present.

Child/Staff	
Ages of Children	Ratio
Infants under 12 months	5:1
One year old	7:1
Two year old	11:1
Three year old	13:1
Four year old	15:1
Five year old	19:1
Six year old and up	23:1

1. An average of the child/staff ratio may be applied to mixed groups of children ages two, three, four, and five. Ratios for children under two or over five years old are excluded from averaging. When a mixed group includes children less than two years of age, the age of the youngest child determines the ratio for the group to which the youngest child is assigned. When a mixed group includes children both older and younger than six years old and older, the ages of the children less than six determine the ratio for the group.

2. During naptime, required staffing shall be present in the center to satisfy child/staff ratios.

B. Child/staff ratio plus one additional adult shall be met for all field trips and non-vehicular excursions.

C. A designated number of children shall relate daily to a designated staff on a regular and consistent basis.

D. When the nature of a special need or the number of children with special needs warrants added care, the provider shall add sufficient staff as deemed necessary by the bureau to compensate for these needs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5317. Supervision

A. Children shall be under direct supervision at all times including naptime. Children shall never be left alone in any room or outdoors without a staff present. Children, excluding infants, may be grouped together at naptime with one staff supervising the children sleeping. All children sleeping shall be in the sight of the naptime worker.

B. While on duty with a group of children, child care staff shall devote their entire time in supervision of the children, in meeting the needs of the children, and in participation with them in their activities.

C. Individuals who do not serve a purpose related to the care of children and/or hinder supervision of the children shall not be present in the center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau

of Licensing, LR 20:450 (April 1994), IR 24:2345 (December 1998), LR 29:

§5319. Food Service and Nutrition

A. Well-balanced and nourishing meals and snacks shall be provided as specified under the Child Care Food Program of the United States Department of Agriculture (See Appendix A).

B. Additional servings of nutritious food over and above the required daily minimum shall be made available to children as needed if not contraindicated by special diets.

C. Meals and snacks shall be served at 2 1/2 to 3-hour intervals.

D. Current weekly menus for meals and snacks listing specific food items served shall be prominently posted. Menu substitutions shall be recorded on or near the posted menu.

E. Children's food shall be served on individual plates, napkins, paper towels or in cups, as appropriate.

F. Providers who do not serve breakfast shall have food available for children arriving in the morning without having eaten this meal.

G. Food shall not be sold to the children. Soft drink vending machines and other food dispensers for personnel use shall be located outside of the children's play areas.

H. Infants shall be held while being bottle-fed. An infant or any child who can hold a bottle shall not be placed in a crib, on a mat, cot, etc. with the bottle unless written permission is obtained from the parent.

I. A bottle shall not be propped at any time.

J. Daily written reports to include liquid intake, food intake, child's disposition, bowel movements, eating and sleeping patterns shall be given to parents of infants.

K. Microwave ovens shall not be used for warming infant bottles or infant food.

L. Developmentally appropriate equipment shall be used at mealtimes, such as feeding tables, highchairs, etc.

M. Drinking water shall be available indoors and outdoors to all children. Drinking water shall be offered at least once between meals and snacks to all children. Water shall be given to infants only with written instructions from parents.

N. Children are not allowed to bring food into the center except under the following circumstances.

1. Bottled formula for infants supplied by the parent shall have labeled bottles and labeled caps/covers with the child's name or initials and refrigerated upon arrival.

2. Baby food supplied by the parent shall be in the original unopened container and labeled with the child's name or initials.

3. When a child requires a special diet, a written statement from a medical authority shall be on file.

4. Children with food allergies/intolerance shall have a written statement signed by the parent indicating the specific food allergy/intolerance.

5. When a child requires a modified diet for religious reasons, a written statement to that effect from the child's parent shall be on file.

6. Refreshments for special occasions such as birthday parties and holidays, with prior approval from the director may be served.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5321. Health Service to the Child

A. A provider that gives medication assumes additional responsibility and liability for the safety of the children. The staff person(s) administering medication shall be trained in medication administration. The training shall be obtained every two years.

B. No medication of any type, prescription, non-prescription, special medical procedure shall be administered by center staff unless authorized in writing by the parent. Authorization shall include:

1. child's name;
2. name of the medication;
3. date(s) to be administered;
4. dosage;
5. time to be administered;
6. special instructions, if applicable;
7. side effects;
8. signature of parent and date of signature; and
9. circumstances for administering "as needed" medication.

C. Medication or medical procedures to be provided on an as needed basis or maintenance prescription shall be updated as changes occur, or at least every three months by the parent.

D. All medication sent to the center shall be in its original container, shall not have an expired date, and shall be clearly labeled with the child's name to ensure that medication is for individual use only.

E. The provider shall follow any special directions as indicated on the medication bottle, i.e., before or after meals, with food or milk, refrigerate, etc.

F. If medication label reads "to consult physician," a written physician authorization with child's name, date, medication name and dosage must be on file in order to administer the medication in addition to the parental authorization.

G. Medication administration records shall be maintained verifying that the medication was given according to parent's authorization, which includes:

1. date;
2. time;
3. dosage administered;
4. signature (not initials) of the staff member who gave the medication; and
5. phone contact (date and time) with the parent prior to giving "as needed" medication.

H. When parents administer medication to their own children on the child care premises, the following information shall be documented:

1. date;
2. child's name;
3. time administered;
4. medication name;
5. dosage administered;
6. side effects; and
7. name of person administering medication.

I. The provider shall not apply topical ointments/sprays/creams (i.e. sunscreen, insect repellent, diaper rash ointment, etc.) without a written one-time authorization signed and dated from the parent, unless changes occur.

J. Upon arrival at the center, each child shall be observed for possible signs of illness, infections, bruises, injuries, physical condition, etc. When noted, results including an explanation from parent and/or child shall be documented.

K. Incidents of injuries or accidents shall be documented. Documentation shall include name of child, date and time of incident, location where incident took place, description of how incident occurred, part of body involved, and actions taken. Documentation of all injuries/accidents shall include time of parental notification and signature of person notifying the parent. The parent or designated person shall be notified immediately in the following situations:

1. blood not contained in an adhesive strip;
2. head injury;
3. human bite which breaks the skin;
4. any animal bite;
5. an impaled object;
6. broken or dislodged teeth; or
7. any injury requiring professional medical attention.

L. Documentation of illnesses or unusual behavior shall be maintained. Documentation shall include child's name, type/description of illness or unusual behavior, date and time of onset and actions taken, time of parental notification and signature of person notifying the parent. The parent or designated person shall be notified immediately in the following situations:

1. allergic reaction;
2. skin changes e.g. rash, spots, swelling, etc.;
3. unusual breathing;
4. dehydration;
5. any temperature reading above normal; or
6. any illness requiring professional medical attention.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5323. Physical Environment

A. Indoor Space Required

1. The center shall be used exclusively by the children and center staff during operating hours. Area licensed for use as a child care center shall not be dually licensed. A child care facility, except those located in a church or school, shall be physically separated from any other business or enterprise.

2. A minimum of at least 35 square feet per child of indoor space shall be available. The space shall not include toilet facilities, hallways, lofts, storage or food preparation areas, or offices. Any room counted as play space shall be available for play during play hours. If rooms are used exclusively for dining or sleeping, they cannot be included in the licensed capacity.

3. For indoor space, the number of children using a room shall be based on the 35 square feet per child

requirement except for group activities such as film viewing, parties, dining and sleeping.

4. Provisions shall be available indoors for temporarily isolating a child having or suspected of having a communicable disease so he/she can be removed from the other children. Movable partitions are permissible so that the space may be used for play when not needed for isolating an ill child.

5. An indoor area shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

B. Outdoor Space Required

1. Outdoor play space with a direct exit from the center into the outdoor play yard shall be available.

2. The outdoor space shall provide a minimum of 75 square feet for each child in the outdoor play space at any one time. The minimum outdoor play space shall be available for at least one-third of the licensed capacity.

3. The outdoor play space shall be enclosed with a fence or other barrier in such a manner as to protect the children from traffic hazards; to prevent the children from leaving the premises without proper supervision; and to prevent contact with animals or unauthorized persons.

4. Crawlspace and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

5. Areas where there are open cisterns, wells, ditches, fish ponds and swimming pools or other bodies of water shall be made inaccessible to children by fencing.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5325. Furnishings and Equipment

A. A working telephone capable of incoming and outgoing calls shall be available at all times and readily available at the center. Coin operated telephones or cellular telephones are not acceptable for this purpose.

B. When a center has multiple buildings and a telephone is not located in each building where the children are housed, a written plan shall be posted in each building for securing emergency help.

C. Appropriate emergency numbers such as fire department, police department, and medical facility shall be prominently posted on or near the telephone.

D. The telephone number for poison control shall be prominently posted on or near the telephone.

E. The center's physical address shall be posted with the emergency numbers.

F. All equipment and materials shall be appropriate to the needs and ages of the children enrolled.

G. All play equipment and equipment necessary for the operation of the center shall be maintained in good repair.

H. Play equipment of sufficient quantity and variety for indoor and outdoor use encouraging physical play and quiet play/activities which is appropriate to the needs and ages of the children shall be provided.

I. Low, open shelves, bins, or other open containers shall be within easy reach of the children for the storage of play materials in each play area.

J. Individual, labeled space shall be available for each child's personal belongings.

K. Chairs and table space of a suitable size shall be available for each child two years of age or older.

L. Individual and appropriate sleeping arrangements shall be provided for each child. Each child shall be provided with a cot, mat, or crib (baby bed) of appropriate size, height, and material, sufficient to ensure his/her health and safety. Each infant shall have a crib separated from all other cribs (non-stackable). Playpens shall not be substituted for cribs.

M. Mats may be used only if the area used for napping is carpeted or if the center is centrally heated and cooled. If mats are used, they shall be of adequate size and material to provide for the health and safety of the child.

N. Each child's sleeping accommodations shall be assigned to him/her on a permanent basis and labeled.

O. Sheets for covering the cot or mat shall be provided by either the provider or the parent, unless the cots or mats are covered with vinyl or another washable surface.

P. Sheets and coverings shall be changed immediately when soiled or wet.

Q. A labeled sheet or blanket shall be provided by either the provider or the parent for covering the child.

R. Cribs, cots, or mats shall be spaced at least 18 inches apart.

S. Cribs shall have spaces between crib slats of no more than two and three-eighths inches.

T. Infant bed railings shall be in the up and locked position at all times when the child is in the bed.

U. Trampolines are prohibited.

V. Infant walkers are prohibited.

W. Toy chests with attached lids are prohibited.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5327. Safety Requirements

A. Prescription and over-the-counter medications, poisons, cleaning supplies, harmful chemicals, equipment, tools and any substance with a warning label stating it is harmful or that it should be kept out of the reach of children, shall be locked away from and inaccessible to children. Whether a cabinet or an entire room, the storage area shall be locked.

B. Refrigerated medication shall be stored in a secure container to prevent access by children and avoid contamination of food.

C. Construction, remodeling, or alterations of structures shall be done in such a manner as to prevent hazards or unsafe conditions (fumes, dust, safety hazards).

D. Secure railings shall be provided for flights of more than three steps and for porches more than three feet from the ground.

E. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

F. Accordion gates are prohibited unless there is documentation on file that the gate meets requirements as approved by the Office of Public Health, Sanitarian Services.

G. Unused electrical outlets shall be protected by a safety plug cover.

H. Strings and cords (such as those found on window coverings) shall not be within the reach of children.

I. First aid supplies shall be kept on-site and easily accessible to employees, but not within the reach of children.

J. All areas of the center used by the children, including sleep areas, shall be properly heated, cooled, and ventilated.

K. Areas used by the children shall be lighted in such a way as to allow visual supervision of the children at all times.

L. The center and yard shall be clean and free from hazards.

M. The provider shall prohibit the use of alcohol, tobacco, and the use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) on the child care premises. This notice shall be posted.

N. The provider shall post "The Safety Box" newsletter issued by the Office of the Attorney General as required by Chapter 55 of Title 46 of the R.S. 46:2701–2711.

O. Fire drills shall be conducted at least once per month. These shall be conducted at various times of the day and night (if nighttime care is provided) and shall be documented. One fire drill every six months shall be held at naptime. Documentation shall include:

1. date and time of drill;
 2. number of children present;
 3. amount of time to evacuate the center;
 4. problems noted during drill and corrections noted;
- and
5. signatures (not initials) of staff present.

P. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the center. Documentation shall include date, time, and signature of staff conducting the visual check.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5329. Non-Vehicular Excursions

A. Written parental authorization shall be obtained for all non-vehicular excursions. Authorization shall include the name of child, type and location of activity, date and signature of parent, and shall be updated at least annually.

B. The provider shall maintain a record of all non-vehicular excursions activities to include date, time, list of children, staff, and other adults, and type of activity.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau

of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5331. General Transportation (Contract, Center Provided, Parent Provided)

A. Providers who transport or arrange transportation of children assume additional responsibility and liability for the safety of the children. Whether transportation is provided on a daily basis or for field trips only, these general regulations shall apply. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

B. Only one child shall be restrained in a single safety belt.

NOTE: For additional information regarding state laws, contact Office of Public Safety.

C. The driver or attendant shall not leave the children unattended in the vehicle at any time.

D. Each child shall safely board or leave the vehicle from the curb side of the street and/or shall be escorted across the street.

E. The vehicle shall be maintained in good repair.

F. The use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

G. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

H. The provider shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles (staff, contracted persons, parents) used to transport children.

I. The provider shall maintain in force at all times current commercial liability insurance for the operation of center vehicles to ensure medical coverage for children in the event of accident or injury. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, the name of the insurance company, policy number, period of coverage and explanation of the coverage. If transportation is provided by parents for field trips or transportation is provided by contract, whether daily or field trip, a copy of the current liability insurance shall be maintained on file.

J. The vehicle shall have evidence of a current safety inspection. In lieu of a visual inspection of a contracted vehicle, a signed statement by the agency representative verifying the expiration date of the current inspection is acceptable.

K. There shall be first aid supplies in each provider or contracted vehicle. First aid supplies (at least one per trip) shall be available for each field trip when parents provide transportation. In lieu of a visual inspection of a contracted vehicle, a signed statement by the agency representative verifying this information is acceptable.

L. There shall be information in each vehicle identifying the name of the director and the name, telephone number, and address of the center for emergency situations. In lieu of

a visual inspection of a contracted vehicle, a signed statement by the agency representative verifying this information is acceptable.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5333. Field Trips (Contract, Center-Provided, Parent Provided)

A. All requirements for general transportation, Section 5331, also apply to field trips.

B. In addition, the following standards shall apply when transportation is provided/arranged for field trips.

1. The provider shall maintain a signed parental authorization for each field trip. Field trip authorization shall include the type of service (contract vehicle, center owned vehicle, parent vehicle) used to transport children, event, location, child's name, date and time of event, parent's signature and date.

2. At least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device and child/staff ratio is met in the vehicle.

3. The provider shall maintain a record of all field trips taken, to include date and destination, list of passengers (children, parents, staff) (going & returning) and method of transportation.

4. If transportation is provided by parents, a planned route shall be provided to each driver and a copy maintained in the center.

5. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

6. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at any destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5335. Daily Transportation (Contract or Center Provided)

A. All requirements in general transportation, Section 5331, also apply for daily transportation.

B. In addition, the following standards all apply when daily transportation is provided/arranged.

1. A staff person shall be present when the child is delivered to the center.

2. The driver plus one staff are required at all times in each vehicle when transporting any child under five years of age.

3. When transporting children five years of age and older, the driver plus one staff person shall be in each

contracted or center provided vehicle unless the vehicle has a communication device which allows staff to contact emergency personnel, and the child/staff ratio is met in the vehicle.

4. Each driver or attendant shall be provided with a current master transportation list including each child's name, pick up and drop off locations and authorized persons to whom the child may be released. Documentation shall be maintained on file at the center whether provided by center or contract.

5. The driver or attendant shall maintain an attendance record for each trip. The record shall include the driver's name, the date, name of all passengers (children and adults) in the vehicle, the name of the person to whom the child was released and the time of release. Documentation shall be maintained on file at the center whether provided by center or contract.

6. The staff shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked. Documentation shall be maintained on file at the center whether provided by center or contract.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29

§5337. Contract Requirements

A. The provider shall maintain a contract which is signed by the provider and a representative of the transportation agency outlining circumstances under which transportation will be provided. This written contract shall be dated, time limited and shall include verbiage in Section 5331.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

§5339. Care for Children during Nighttime Hours

A. All minimum standards for child care centers apply to providers who care for children after 9:00 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

B. In addition, the following standards shall apply.

1. There shall be a designated "staff-in-charge" employee who is at least 21 years of age.

2. Adequate staff shall be present in the center to meet the child/staff ratios as indicated in Section 5315; however, there shall always be a minimum of at least two staff present.

3. Meals shall be served to children who are in the center at the ordinary meal times.

4. Each child shall have a separate, age appropriate bed or cot with mat or mattress covered by a sheet for each child, as well as a covering for each child (bunk beds are not allowed).

5. There shall be a posted schedule of activities.

6. Evening quiet time activity such as story time, games, and reading shall be provided to each child arriving before bedtime.

7. Physical restraints shall not be used to confine children to bed.

8. The center's entrance and drop off zones shall be well-lighted during hours of operation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

Family Impact Statement

1. What Effect Will this Rule Have on the Stability of the Family? This proposed Rule to revise minimum standards for licensure of Class "A" child day care facilities will have no effect on the stability of the family.

2. What Effect Will this Have on the Authority and Rights of Persons Regarding the Education and Supervision of their Children? The proposed Rule provides parents with the minimum standards required for Class "A" day care facilities. Parents can use the information in these regulations to assist them in making an informed decision when choosing a day care facility that will educate and supervise their children.

3. What Effect Will this Have on the Functioning of the Family? This Rule is not anticipated to have any effect on the functioning of the family.

4. What Effect Will this Have on Family Earnings and Family Budget? There will be no effect on family earnings and family budget.

5. What Effect Will this Have on the Behavior and Personal Responsibility of Children? A day care facility adhering to the minimum standards in this proposed Rule will be better equipped to improve the behavior and personal responsibility of children in its care.

6. Is the Family or Local Government Able to Perform the Function as Contained in this proposed Rule? The family or local government is not able to perform the function contained in this proposed Rule.

Interested persons may submit written comments within the next 20 days to Thalia Stevenson, Director, Bureau of Licensing, P. O. Box 3078, Baton Rouge, LA 70821-3078.

Public hearings on this proposed Rule will be held on Thursday, April 24, 2003 at the Secretary of State Auditorium, 8549 United Plaza Boulevard, Baton Rouge, from 10 a.m. to 12 p.m.; Friday, April 25, 2003 at the Louisiana Methodist Children and Family Services, 901 South Vienna, Ruston, from 10 a.m. to 12 p.m.; and Monday, April 28, 2003 at Delgado Community College, Student Life Center, 615 City Park Avenue, New Orleans, from 10 a.m. to 12 p.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at the public hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the

hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Gwendolyn P. Hamilton
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Class "A" Child Day Care

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

There will be a minimal cost for printing the new regulations. A total of 3,500 copies of the regulations will be printed at approximately \$1.58 per copy (totaling \$5,530), and a cost of \$2,006 for postage to mail regulations to all currently licensed facilities. The total cost is \$7,536. There are no other implementation costs to state or local governmental units associated with this proposed Rule to adopt minimum licensing standards for Class "A" child day care facilities.

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

The Department of Social Services currently collects licensing fees from facilities that are licensed under this category. Depending on the capacity of the facility, the fees range from \$25 for 15 or fewer children up to \$250 for 101 or more children. This policy revision will not affect the amount collected from these facilities.

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

There may be some minor additional expenses to some facilities relating to the following regulations.

5310.B.6. Raising clock hours for director qualifications from 60 to 90 hours. This will not affect any current director. Any training received through resource and referral classes contracted through OFS are for a minimal charge (around \$5 per class) or free. The current regulation requiring 6 credit hours is still applicable.

5312.D.1 Clarifies 12 clock hours of approved training does not include training required by DHH in Health and Safety, Pediatric First Aid, and Infant/Child/CPR. This may cause an additional cost in training expenses for those facilities that are not currently getting those classes.

5312.E.1&2 Requires at least 50 percent of the staff on the premises and accessible to children have current infant/child/adult training in CPR (up from a minimum of two staff). Many facilities are already meeting this standard. The cost of the class varies by teacher and by the number of staff taking the class.

5335B.2. Requires two adult staff at all times when transporting any child under five years of age, for daily transportation. This may require additional staff pay for the time spent delivering children to and from home.

Currently, there are 1,533 licensed Class "A" facilities statewide. These facilities have a combined capacity of 101,324. Depending on the ages of the children in care, the average provider could have a staff of six teachers and a full-time director. An average facility may have additional salary expenses to cover two staff at all times in a facility and additional salary expenses to provide two staff for transporting children under the age of five. This expense will be offset by providing additional safety protection to the children in care. Additional training expenses may be incurred, but can be kept to a minimum by using resources provided by OFS.

Other revisions require changes in documentation. All proposed revisions were initiated to improve child safety and reduce provider liability.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no impact anticipated on competition or employment because the Child Care Assistance Program plans to give additional reimbursement to child care facilities based on the quality of child care. This should ease the burden of expenses for additional training. Since providers are allowed to charge for providing transportation, if there is an additional cost for staffing, they may choose to pass that expense to the families. It should be noted that no facility is required to provide transportation.

Thalia Stevenson
Director
0303#083

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of State Office of the Secretary of State Division of Archives

Records Management Policies and Practices (LAC 4:XVII.Chapters 1-15)

The Department of State, Division of Archives, Records Management and History, in accordance with R.S. 44:405, and with the Administrative Procedure Act R.S. 49:950 et seq., hereby adopts LAC Title 4, Part XVII Records Management Policies and Practices. This text is being inserted to provide official guidance for state agencies in establishing and maintaining an active records management program as required by R.S. 44:410 et seq.

Title 4

ADMINISTRATION

Part XVII. Records Management Policies and Practices Chapter 1. Agency Records Officer Designation

§101. Designation

A. In compliance with R.S. 44:411, on or before July 1 of each state fiscal year, the chief executive officer of each agency, as defined by R.S. 44:402 shall designate a records officer to act as liaison between the division and the agency on all matters related to records management for the term of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§103. Process

A. Each agency shall communicate their records officer designation by completing form SS ARC 940 Records Officer Designation Form, (including signature of the chief executive officer and the date the designation was signed) and submitting the completed form to the state archivist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§105. Responsibilities of an Agency Records Officer

A. Each agency should select a records officer who:

1. can communicate effectively with agency personnel and with the division's personnel;

2. has adequate knowledge of how your agency is organized and its operations;

3. has the ability to work with the agency's information services section on records management issues related to electronic records created and maintained by the agency;

4. has the authority to oversee the records management program of the agency, including:

a. the development and implementation of an agency retention schedule;

b. the compliance with Division and legal requirements for agency records;

c. the temporary storage of records at the State Records Center (if necessary) or the transfer of records for permanent storage with the State Archives (if required or requested);

d. and the processing of disposal requests and destruction of agency records as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§107. Changes in Records Officer Designees

A. Agencies wishing to change their agency's designee before their designation period has expired, must notify the State Archivist within 30 days of such a change by completing form SS ARC 940 and noting "AMENDMENT" on top of the page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Chapter 3. Retention Schedule Development

§301. Definitions

A. Unless otherwise defined in this Chapter, the definitions for key terms in this chapter are provided in R.S. 44:402.

*Approved Retention Schedule*Ca retention schedule which has been approved by the state archivist or his designee.

*Records Series*Ca group of related or similar records, regardless of medium, that may filed together as a unit, used in a similar manner, and typically are evaluated as a unit for determining retention periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§303. Records Inventory

A. To facilitate the development of agency retention schedules in compliance with R.S. 44:411, each agency shall:

1. review the functions and activities of their agency;

2. develop a list of records produced, received and maintained by the agency;

3. identify the inclusive dates, the medium and volume of records maintained for each record series held by the agency. This provision may be facilitated by agencies completing a records Management Inventory Form (SS ARC 960) for each record series to document their decision process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§305. Writing the Retention Schedule

A. Each agency shall submit a draft retention schedule to the State Archives for review and approval. In developing the draft, each agency will:

1. conduct adequate research to determine the length of time each record series needs to be maintained based on their administrative, legal, fiscal, and any historical/informational value. Legal citations should be included if statutes or rules exist, on either the state or federal level, the retention of certain records series;

2. develop specific retention and disposition instructions for each records series, including transference of inactive records to an appropriate records storage facility, the maintenance of long-term or permanent records within the agency, and/or transfer of custody of permanent records to the State Archives control.

3. develop a draft retention schedule, using form number SS ARC 932, providing a brief description of the records series, suggested retention periods for each records series, recommended disposition instructions for non-permanent records, a notation for any records series that contains confidential information at the time of its creation in the remarks section and any citations used to formulate the retention value, if applicable. In the event that a subset of records are "declared" confidential due to pending investigation or similar event, a list of the records series involved should be transmitted to the State Archives within 30 days of the declaration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§307. Retention Schedule Maintenance

A. Each agency shall review its retention schedule annually to identify any record series requiring an addition, amendment or deletion to the agency's approved schedule. Each agency shall submit an amended SS ARC 932 noting any changes to its existing retention schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§309. Retention Schedule Renewal

A. An agency schedule, once approved by the State Archives will be valid for five years from the date of approval. Ninety days prior to the five year anniversary of a schedule's approval, each agency shall submit their schedule for renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Chapter 5. Storage of Records in State Records Center

§501. Definitions

A. For the purpose of this Chapter the following definitions apply.

*Approved Records Center Box*Ca box that is 1.2 cubic feet in size, with dimensions of 15"x12"x10" and having no lids (fan fold tops only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§503. Eligibility

A. In accordance with R.S. 44:408, the State Records Center may accept records from state agencies when they meet the following criteria.

1. The records are scheduled on an approved Records Retention Schedule.

2. The records belong to an office of the State Executive or Legislative branches of Louisiana government.

3. The records are considered inactive (not from current operational year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§505. Packing Instructions

A. Each box containing eligible records (as listed above) must comply with the following requirements.

1. The records are boxed in an approved records center box.

2. The records in each box are from the same records series with the same retention value.

3. The records should be packed in the same order as they are filed in the agency.

4. Boxes should not contain mixed media (i.e., microfiche with paper records).

5. Approximately 1 inch of space should be left in each box to facilitate retrieval.

6. Records should not be placed on top of other records in the box.

7. The approximate weight of each box should not exceed 35 pounds.

8. Packing tape is discouraged. If utilized, it may only be used to reinforce the bottom of the box.

9. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.

10. Boxes should not contain hanging file folders, three ring binders or binder clips.

11. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§507. Labeling Instructions

A. Each agency must assign a unique agency box number to each box to be transferred by affixing the number to the upper right hand corner of the narrow end of the box (the end of the box) and may include a brief descriptor for the records (i.e., 1997, FY2002, A-F, #1001-2500, etc.) to the left of the agency box number. This box number (and descriptor) must correspond to an entry made on the agency's transmittal forms submitted for the box.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§509. Disposal Date Cycles

A. Records stored in the State Records Center must be assigned one of two disposal cycles. Assignment should be made based on the following criteria:

1. July Cycle. Records that are retained based on fiscal year retention periods or meet their retention period between January 1 and June 30 during a given year.

2. January Cycle. Records that are retained based on calendar year retention periods or meet their retention period between July 1 and December 31 during a given year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§511. Records Transmittal

A. Prior to the delivery of records to the State Records Center for storage, an agency must provide the Records Center with completed Records Transmittal and Receipt forms (SS ARC 103), which will serve as an inventory sufficiently detailed to enable the Records Center to retrieve any record needed by the agency for reference.

1. A separate transmittal form (SS ARC 103) should be completed for each disposal date (i.e., January or July of a given year).

2. For each box, the agency should include the minimum information on their transmittal forms:

- a. agency box number;
- b. beginning and ending dates for the records in the box;
- c. a brief meaningful description of the contents of the box (i.e., Employees A-E, Batch 151-210);
- d. a notation if the records are on a media other than paper;
- e. a notation if any of the records contain confidential information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§513. Arranging Transfer

A. After completing the transmittal forms for the boxes to be stored at the State Records Center, the agency shall mail or fax the transmittals to the State Records Center at least two weeks prior to the date of transfer the agency is requesting. The State Records Center will contact the agency's records officer to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§515. Delivery of Records

A. In general, delivery dates will be set on a first come, first serve basis. The State Records Center reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the State Records Center staff or the Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§517. Ownership and Access

A. Records stored at the State Records Center remain property of the agency depositing them at the State Records Center. Only the depositing agency's designated employees and to a limited extent, State Records Center personnel will be provided access to records stored in the State Records Center. Any requests to see an agency's records from non-authorized parties will be forwarded to the agency for written approval. A written approval must include the name of the person, the Records Center box number for the records being requested and the signature of the agency's records officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§519. Requesting Stored Records

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Records Center by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the Records Center box number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-served basis. In the event that an agency has a true emergency, the State Records Center will try to accommodate a request for expedited service.

3. The State Records Center will contact the agency's Records Officer when the records in question are ready for review or pick-up. Upon arrival to the State Records Center, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center requires a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Records Center belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§521. Disposal of Records

A. Twice a year the State Records Center will generate disposal requests for agency records that have met their retention periods. Such disposal requests will be forwarded to the agency records officer for agency disposal approval. The agency will have 45 days to respond to the request. The State Records Center reserves the right to return to the agency any records listed on the disposal request after the allotted 45 days has lapsed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§523. Agency Disposal Approval

A. Once the agency receives the disposal request, the agency records officer must ascertain if any of the records listed on the request require further retention or are required for pending or on-going litigation. The records officer should consult with the agency's legal counsel if there are

any legal holds that require the records being retained for a longer duration.

1. If the records are not needed for any legal or administrative need, the agency records management officer shall sign the statement indicating that in consultation with the agency's legal counsel the records are no longer needed by the agency and may be destroyed.

2. If any record is still required by the agency, they may designate the records to be retained by noting the new disposal date requested and the reason for the extended retention. The agency may request the records be transferred back to their custody if they do not wish the records to remain in the State Records Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§525. Archival Review

A. Prior to the destruction of any records in the State Records Center, the State Archives will review each disposal request for possible archival records. In the event that the State Archives wishes to retain some records for archival review, the State Archives will notify the agency which agency records they are transferring to the Archives acquisition section for processing. Once transferred to the State Archives the ownership of the record will transfer from the agency to the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Chapter 7. Transferring Records for Inclusion in Archives Collection

§701. General

A. In accordance with R.S. 44:411, agency shall secure written approval from the state archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§703. Eligibility

A. In accordance with R.S. 44:401, the State Archives may accept records from state agencies according to the following criteria:

1. the records are scheduled on an approved Records Retention Schedule;
2. the records have been determined to be of historical value or mandated by law to be kept as permanent records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§705. Packing Instructions

A. For records that easily fit into archive box, each box containing eligible records as listed in §703 must comply with the following requirements.

1. The records are boxed in an approved archival box.
2. The records in each box are from the same records series with the same retention value.
3. The records should be packed in the same order as they are filed in the agency.
4. Boxes should not contain mixed media (i.e., microfiche with paper records).

5. The approximate weight of each box should not exceed 35 pounds.

6. Taping of printed descriptions to the box and use of packing tape is prohibited.

7. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.

8. Boxes should not contain hanging file folders, three ring binders or binder clips;

9. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§707. Non-Standard Sized Packing Instructions

A. Prior to sending records that exceed 8 1/2" x 14", the submitting agency should contact the Archives Acquisitions Section for further instructions on how to pack such records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§709. Labeling Instructions

A. For boxes donated or sent to the State Archives for permanent storage:

1. the agency must assign a unique agency number to each box to be transferred by affixing the number ONE of the long sides of the box;

2. a brief descriptor for the records (i.e., Dept of State, Correspondence 6/1/00C12/31/00; Bd of Ethics Campaign Finance Reports #98-04 through #98-100) under the box number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§711. Archives Transmittal Form Required

A. Prior to the delivery to the State Archives, the submitting agency must provide completed Archives Transmittal Forms, which will serve as an inventory, sufficiently detailed, to enable Archives staff to retrieve records as they are needed.

1. Each transmittal form, the agency shall include:
 - a. name and address of agency;
 - b. the records officer name and official title within the agency;
 - c. contact information (phone and e-mail address) for the records officer;
 - d. any restrictions that exist for the records included on the particular form;
 - e. the total number of boxes/items to be transferred;
 - f. signature of transmitting records officer and date signed by officer;
 - g. page number and total number of pages of transmittal (i.e., Page 1 of 5).

2. For each box or item, agency shall include on the transmittal:

a. title of records series as it appears on the agency's approved retention schedule;

b. more than one box may be listed on an Archival Transmittal Form.

3. Submission and the acceptance of an Archives Transmittal Form from an agency or donor by the State Archives constitutes an Act of Donation to the State Archives by the agency or donor, and transfers all rights and ownership of the records to the State Archives.

4. The State Archives will return a signed copy of the Archival Transmittal form signed by the receiving archivist after the transmittal has been processed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§713. Arranging Transfer

A. After completing the Archival Transmittal forms for the items to be transferred to the State Archives, the agency or donor shall transmit the forms at least one week prior to the date of transfer requested by the agency or donor. The State Archives, after reviewing the forms, will contact the agency's or donor's contact listed on the transmittal to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§715. Delivery of Records

A. In general, delivery dates will be set on a first-come, first-served basis. The State Archives reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the Archives staff or Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§717. Long Term Records Storage

A. Records transferred to the State Archives for permanent or long-term storage remain property of the agency depositing them with the State Archives. Only the depositing agency's designated employees and to a limited extent, Archives staff, will be provided access to records stored with the State Archives. Any requests to see an agency's records from non-authorized parties (including public records requests) will be forwarded to the owner agency for written approval. Written approval must include the name of the person authorizing the access, the person access is being granted and the archives storage box number(s) in which the record(s) are located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§719. Requesting Stored Records

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Archives by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the agency box

number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-served basis. In the event that an agency has a true emergency, the State Archives will try to accommodate a request for expedited service.

3. The State Archives will contact the agency's records officer when the records in question are ready for review or pick-up. Upon arrival to the State Archives, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center require a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Archives belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Chapter 9. Destruction of Public Records

§901. General

A. In accordance with R.S. 44:411, agency shall secure written approval from the State Archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§903. Scheduled Records

A. Agencies wishing to dispose of records listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records). Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§905. Non-Scheduled Records

A. Agencies wishing to dispose of records not listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records) and a completed Records Management Inventory Form for each non-scheduled series listed on the disposal request. Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§907. Destruction Authorization

A. Once a disposal request has been received by the State Archivist (or his designee), the agency will be notified within 30 days of receipt that:

1. their disposal request has been approved;
2. their disposal request has been denied along with an explanation why approval was not granted;
3. their disposal request contains records that should be transferred to the State Archives for possible inclusion in the State Archives; or
4. their disposal request requires more research and requires an additional 30 days to issue a response to the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§909. Legal Hold Policy

A. Each agency is required to develop and implement an internal process for placing legal holds on records that are involved in state or federal investigations and/or litigation. Agencies should submit their policy within 30 days of creation to the State Archives. The policy should address:

1. the agency's internal disposal approval process;
2. which employees are notified of a legal hold, when they are told and how they are told;
3. who is responsible for contacting possible third party vendors who may house records or data covered under a legal hold;
4. what steps should be taken by notified employees to safeguard records or data covered under a legal hold;
5. the agency's legal hold forms (including file level notice sheets) and instructions for any legal hold form/release forms created by the agency to implement the plan;
6. who within the agency has legal authority to lift the legal hold once the litigation or investigation has concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§911. Disposal Methods

A. Once approval for disposal has been granted, an agency should dispose of the agency records in a manner acceptable to the level of confidentiality the record requires.

1. If a records series contains no information considered confidential in nature, an agency may use any acceptable disposal method including:
 - a. landfill;
 - b. recycling;
 - c. shredding;
 - d. incineration;
 - e. maceration;
 - f. pulverization.
2. If a records series contains information considered confidential in nature, an agency may use any of the following disposal methods:
 - a. shredding;
 - b. incineration;
 - c. maceration;
 - d. pulverization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§913. Certificate of Destruction

A. Agencies shall document the destruction of their records by maintaining a Certificate of Destruction for all records requiring destruction approval from the State Archives. Such Destruction Certificate shall consist of either:

1. the current State Archives Certificate of Destruction form (SS ARC 933) along with the approved destruction request from the State Archives; or
2. an equivalent document that records the date the records were destroyed, the method of destruction, the approved authority to dispose of records form and the signature of at least one witness to the destruction or removal of the records. In the event that a recycling company is used for destruction, the date the records are transferred to the recycler for destruction will constitute the destruction date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Chapter 13. Electronic Records

Subchapter A. Agency Responsibilities

§1301. Definitions

A. For the purpose of this Chapter the following definitions apply.

*Electronic Mail (E-mail)*Ca system that enables an agency to compose, transmit, receive and manage text and/or graphic electronic messages and images across networks and through gateways connecting other local area networks.

*Long-Term Record*Ca record with a total retention requirement of over 10 years but less than permanent.

*Permanent*Ca record with a total retention of life of the agency and/or the state and intended to be maintained in perpetuity.

*Short-Term Record*Ca record with a total retention requirement of 10 years or less.

*State Record*Ca record as defined by R.S. 44:402.

*Transitory*Ctransitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1303. General

A. The head of each agency must ensure:

1. that a program is established for the management of state records created, received, retained, used, transmitted, or disposed of on electronic media;
2. that the management of electronic state records are integrated with other records and information management records management programs of the agency;
3. that electronic records management objectives, responsibilities and authorities are incorporated into pertinent agency directives and policies;
4. that procedures are established for addressing records management requirements, including, retention, access and disposition requirements;

5. that training is provided for users of electronic records systems, in the operation, care, and handling of the information, equipment, software and media used in the systems;

6. that documentation is developed and maintained about all electronic state records in a manner adequate for retaining, reading, or processing the records and ensuring their timely, authorized disposition; and

7. that a security program for electronic state records is established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Subchapter B. State Archives Imaging Policy

§1305. Imaging System Survey; Compliance

A. In accordance with R.S. 44:413, each state agency shall complete a State Archives Imaging Survey and provide any amendments to their survey in a timely manner when original information provided is no longer accurate.

1. Survey Information. Each agency shall provide the following information to the State Archives:

a. a listing of all records series maintained/managed by the system being surveyed;

b. the hardware and software being used (including model and version numbers) including total storage capacity;

c. the type and density of media being used by the system (magnetic, WORM, etc.);

d. the type and resolution of images being produced (TIFF class 3 or 4, and dpi);

e. the agency's quality control procedures for image production and maintenance;

f. the agency's back up procedures for the system and where (on-site, off-site) and how many sets of images exist;

g. the agency's migration plan for purging images from the system that have met their retention period.

2. Initial Survey Implementation. Any agency with an imaging system in operation before June 1, 2003 shall submit their survey response to the State Archives by no later than July 31, 2003.

3. New Systems. In addition to completing the Imaging System Survey, any agency implementing an imaging system on or after June 1, 2003, must contact the State Archives prior to implementation to ensure that a retention schedule, approved by the State Archives, is in place and that the system can comply with their schedule's requirements.

4. Amending Imaging Survey Response. In the event that any changes in the initial information providing on an agency's Imaging Survey response, the agency shall submit an amendment to their survey response within 90 days of the change occurring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1307. Acceptable Means of Records Preservation

A. In accordance with R.S. 44:410, electronic digitizing (imaging) is an acceptable means for records preservation for the maintenance of short-term state records, as defined in LAC 4:XVII.1301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1309. Short-Term Records

A. Agencies utilizing imaging for the creation and maintenance of short term records, may use imaging without maintaining the original or a microfilm copy of the original provided that:

1. the records series has been included on the agency's retention schedule submitted to and approved by the State Archivist or his designee;

2. a quality control inspection of the images is conducted prior to the destruction of the original source documents to ensure the visibility and accessibility;

3. the proper approval has been secured from the State Archives prior to the destruction of the original source documents;

4. the records series maintained on imaging systems are stored in such a manner as to comply with the retention requirements (like retentions on the same optical disk or subdirectory).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:

§1311. Long-Term and Permanent Records

A. In accordance with R.S. 44:410, agencies utilizing imaging for the creation and maintenance of long term and/or archival records, may use imaging for administrative purposes provided that for preservation purposes the agency either:

1. maintain the original source documents for the retention period listed on the agency's retention schedule; or

2. produce a microfilm back up of the records and store the microfilm with the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:

Subchapter C. Electronic Mail (E-mail) Guidelines

§1321. Series Retention of E-mail

A. E-mail should be retained based on content not on media type or storage limitations. Agencies should not encourage employees to unilaterally discard E-mail because of artificial limits on E-mail box capacities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:

§1323. E-Mail is Not a Records Series

A. E-mail should not be treated as a single record series for retention scheduling purposes. E-mail should be incorporated into existing records series maintained by an agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:

§1325. Types of E-Mail

A. There are two broad categories of E-mail: record and non-record, based on their administrative and retention requirements.

1. Transitory. Transitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

a. Examples. Transitory information can include the following: unsolicited and junk e-mails not related to agency work, listserv and other e-mail broadcast lists that require subscription (including newspapers), reminders for meetings and events (i.e. cake in the conference room, staff meeting moved from 2 p.m. to 3 p.m.), personal non-work related e-mails received by employees.

b. Retention. There is no retention requirement for transitory messages. Public officials and employees receiving such communications may delete them immediately without obtaining approval from the State Archives.

2. Record. Electronic mail records are records that have administrative value to the agency or are required to be maintained under state or federal law for a specified amount of time.

a. Retention. The retention requirement for e-mail records must follow suit with records with similar content found in other media (i.e., paper, film, electronic image). In the event that the content of the message does not fit into an existing record series on an approved retention schedule, the e-mail should be maintained in a manner consistent with R.S. 44:36 and should be added to the agency's approved retention schedule if the series is expected to remain active.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1327. Maintenance of Electronic Mail

A. Records created using an e-mail system may be saved for their approved retention period by one of the following.

1. Print message and file in appropriate hard copy file.
2. Place in folders and save on personal network drive or C: drive.
3. Save to removable disk (including CD-ROM). 3.5" disks are not recommended for retention periods of more than one year due to the instability of this medium.
4. Transfer to an automated records management software application.
5. Managed at the server by an automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1329. User Responsibilities

A. It is the responsibility of the user of the e-mail system, to manage e-mail messages according to their agency's retention schedule.

1. It is the responsibility of the sender of e-mail messages within the agency's e-mail system and recipients of messages from outside the agency to retain the messages for the approved retention period.

2. Names of sender, recipient, date/time of the message, as well as any attachments must be retained with the message. Except for listserv mailing services, distribution lists must be able to identify the sender and recipient of the message.

3. User responsibilities may be mitigated by the use of a server level automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1331. Agency Responsibilities

A. Each agency should adopt and disseminate to their employees an agency Electronic Mail (E-mail) Proper Use Policy. The policy should include:

1. defining official use and set limits on personal use of electronic messaging (similar to limitations that exist for telephone, fax, and personal mail);

2. prohibiting the use of electronic messaging system to promote the discrimination (on the basis of race, color, national origin, age, marital status, sex, political affiliation, religion, disability or sexual preference), promotion of sexual harassment, or to promote personal, political, or religious business or beliefs;

3. prohibiting employees from sending electronic messages under another employee's name without authorization;

4. prohibiting the altering of electronic messages, including any attachments;

5. agency process for storing and maintaining electronic messages for the duration of the message's retention period;

6. notice that users of an agency's electronic messaging system should not expect a right of privacy and that electronic messages may be monitored for compliance and abuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1333. Use of Records Management Application (RMA) Software

A. Agencies may use records management application (RMA) software to manage records in digital form. RMA software categorizes and locates records and identifies records that are due for disposition. RMA software also stores, retrieves, and disposes of the electronic records that are stored in its repository. Agencies should use RMA software that complies with DoD 5015.2-STD, "Design Criteria Standard for Electronic Records Management Software Applications," as issued by the U.S. Department of Defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Chapter 15. Microfilm Policy

§1501. General

A. This policy applies to the microfilming of any agency record that is to be maintained solely in microfilm format and to all microfilm which is created or maintained for the full retention period of the record as a security copy of an

agency record. This policy does not apply to convenience film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1503. Definitions

A. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections have the meanings defined in the R.S. 44:402.

Aperture Card Card with a rectangular opening(s) into which 16mm/35mm microfilm frames can be inserted, mounted, or pre-mounted.

Batch A quantity of chemicals or film which has been prepared at one time, and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

CAD (Computer Assisted Design) A method of creating microimages by computer-driven laser.

Convenience Film Microfilm copies of records created only for convenience of use and considered non records under R.S. 44:1.

Declaration by the Camera Operator A target photographed on film following the filmed records that provides identification of beginning and ending records on the film; signature of the camera operator; date the declaration was filmed; and reduction range, if more than one ratio has been used.

Diazo A photographic film containing one or more photosensitive layers composed of diazonium salts in a polymeric material which react with coupler(s) to form an azo dye image after film processing.

Duplicate Microfilm A microfilm copy made from the original or master negative. Can be silver, diazo or vesicular film.

Essential Record Any state record necessary to resume or continue a state agency's business; to recreate its legal and financial status; and to preserve the rights of the agency, its employees, and its clients.

Microfilm Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

Microfilm Container A generic term for any enclosure in close or direct contact with film such as a reel, can, bag, folder, sleeve (sheath), jacket, envelope, window mount or mat, slide mount, carton, cartridge, cassette, and aperture card.

Microfilming The methods, procedures, and processes used to produce microfilm.

Original Microfilm First generation of film produced when records are filmed.

Silver Original First generation silver-gelatin film or other archival quality film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1505. Access to Referenced Standards and Practices

A. The copyrighted standards and recommended practices issued by the American National Standards Institute (ANSI) and/or the Association for Information and

Image Management (AIIM) listed in this chapter are considered best practice and each agency should strive to meet their minimum requirements for all microfilming of state records. A copy of each of the standards mentioned in this rule will be on file upon adoption of this rule and available for public inspection by appointment, during regular working hours at the Louisiana State Archives Building, 3851 Essen Lane, Baton Rouge, LA 70809. The standards are distributed by and available from the Association for Information and Image Management (AIIM), Suite 1100, 1100 Wayne Avenue, Silver Spring, MD 20910-5699.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1507. Retention Schedule Compliance

A. Microfilming of records must be in compliance with an approved agency retention schedule except, if an agency does not have an approved retention schedule, a microfilming needs assessment must be completed by the State Archives to determine if filming is justified.

1. For microfilm maintained as roll film, no more than one record series is permitted on each roll of microfilm.

2. Original records that have been microfilmed may be destroyed or source documents that have been filmed prior to the expiration of their retention periods if the microfilm complies with this policy and in accordance with R.S. 44:36 and R.S. 44:39.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1509. Use of Original Microfilm

A. After the completion of production tests and quality inspection, original microfilm must not be unwound and used for any purpose except:

1. to produce duplicate copies of the film;
2. to carry out periodic inspection of stored original film;
3. to expunge records required by law;
4. to destroy records when retention period has been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1511. Annual Report Requirement

A. All state agency microfilm produced in house by a state agency or by an outside vendor shall make an annual report to the State Archives in the form of letter or report and shall include:

1. equipment used by agency or vendor;
2. record series annually filmed by agency;
3. total number of:
 - a. 100' 16 mm reels;
 - b. 215' 16 mm, reels;
 - c. 35 mm reels;
 - d. microfiche;
 - e. jackets;
 - f. aperture cards;
 - g. images filmed;
 - h. duplicate reels produced.

4. the method(s) and/or vendor used to process agency microfilm;

5. the location of the original film produced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1513. State Centralized Microfilm Unit

A. In accordance with R.S. 44:415, all state agencies shall contract with the State Archives for microfilming services. If the State Archives is unable to meet the agency's needs, the State Archives can grant permission for the agency to contract with a private vendor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1515. Film Requirement

A. Film with a polyester base must be used for records having a retention period of 10 years or more. Any film type may be used for records having a retention period of less than 10 years, provided the microfilmed record will last for the required retention period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1517. Film Production

A. The records to be filmed must be arranged, identified, and indexed for filming so an individual document or series of documents can be located on the film. In instances where records are not self-indexing (i.e. not in a readily identifiable numeric or alphabetic sequence) an index must be maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1519. Image Marking

A. Any use of image marking should comply with standard ANSI/AIIM MS8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1521. Targets

A. Whenever possible, targets must all face the same direction as the records being microfilmed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1523. Image Sequence

A. Image sequence on roll microfilm must be at a minimum:

1. leaders with a minimum of 3 feet (36 inches) of blank film;
2. density target and resolution target;
3. title page (including agency of record);
4. records series identification page;
5. records on film;
6. declaration by camera operator;
7. density target and resolution target;

8. trailer with a minimum of 3 feet (36 inches) of blank film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1525. Retake Sequence

A. Filming sequence for retakes and additions on all microfilm must be:

1. title target identifying the retake or addition records;
2. the retake or addition records; and
3. declaration of the camera operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1527. Splices

A. Retakes and additions can be spliced either before the density and resolution targets at the beginning of the film or after the density and resolution targets at the end of the film. Retakes and additions can be on another roll of film if cross-indexed to the original roll on the title target and the container label of the retake.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1529. Inspection

A. Original processed microfilm must be visually inspected according to the following procedures.

1. A visual inspection of microfilm within two weeks of creation must be completed to verify legibility.
2. Film of essential records or records having a retention period of 10 years or more must be inspected image by image.
3. Film of non-essential records having a retention period of less than 10 years must be inspected at least every 10 feet of each roll or every third microfiche.

4. Images of documents must be uniformly placed on the film and must be free of any defects in the filming area that would interfere with the documents being read.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1531. Cameras and Ancillary Equipment

A. It is recommended that camera equipment be calibrated, tested, or otherwise inspected and adjusted at least twice annually or more often if required to comply with manufacturer's specifications or recommended operating and maintenance procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1533. Storage of Original Microfilm

A. Original film should be stored in a separate building from where duplicate copies or the original record are housed. In addition, films of different generic types, such as silver-gelatin, diazo, and vesicular films, should not be stored in the same storage room/vault or in rooms sharing common ventilation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1535. Storage of Original Microfilm at State Archives

A. Original film of original records at the State Archives must be placed in an Archives vault on a different floor than the original records or duplicate film. Films of different generic types, should not be stored in the same vault.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1537. Storage Environment

A. Original microfilm must be stored in a storage room or vault that:

1. offers protection from fire, water, steam, structural collapse, unauthorized access, and other potential hazards;
2. is equipped with a fire alarm and fire suppression system;
3. has adequate temperature and humidity controls:
 - a. for original film of records with a retention of 10 years or more, temperature must not exceed 72 degrees Fahrenheit, and a constant relative humidity of 45 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period;

- b. for original film of records with a retention period of 10 years or less, the maximum temperature must not exceed 77 degrees Fahrenheit, and a relative humidity range between 20 percent and 60 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1539. Containers and Storage Housing

A. Storage housing materials must be noncombustible and non-corrosive. Microfilm containers for original microfilm must:

1. be used for processed microfilm to protect the film and facilitate identification and handling.
2. be chemically stable materials such as non-corrodible metals (anodized aluminum or stainless steel), peroxide-free plastics, and acid-free paper to ensure no degradation is caused to the images.
3. stored in a closed housing or may be stored on open shelves or racks if the film is in closed containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1341. Container Labels

- A. Labels must include:
1. whether the film is original microfilm or a duplicate, including generation number if known;
 2. identification number;
 3. name of agency;
 4. records series title;
 5. inclusive dates of records;
 6. the beginning and ending records; and
 7. retakes/additions, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1541. Inspection of Stored Original Microfilm

A. Inspection of stored original microfilm may be conducted in accordance with the following standards:

1. ANSI IT9.11;
2. ANSI/AIIM MS45; and
3. ANSI/NAPM IT9.1.

B. When inspection is done, the sample of microfilm to be inspected for each storage room or vault, if more than one, must be 1/1000th of the total volume of stored microfilm or at least 100 microforms (rolls, jackets, microfiche, aperture cards, COM, etc.), whichever is greater. Sampling procedures must be established that will assure that all parts of the group of microfilm are represented.

C. Inspection must be conducted every five years. Microfilm that has been stored under temperature and/or humidity conditions other than those specified in this policy must be inspected every two years.

D. Containers used to store the film must be inspected for evidence of rust, corrosion, or other deterioration and replaced, if needed.

E. Original microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

F. If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

G. Any deteriorating film must immediately be removed from the storage area and the problem corrected before returning the film to storage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1543. Computer Output Microfilm (COM)

A. All policies for COM are the same as other microfilm formats, except:

1. The COM original must be wet processed silver-gelatin film for essential records and records with a retention of 10 years or more.

2. The following standards for production, testing, and inspection of COM are recommended:

- a. ANSI/AIIM MS1;
 - b. ANSI/AIIM MS5;
 - c. ANSI/AIIM MS28;
 - d. ANSI/AIIM MS39;
 - e. ANSI/AIIM MS43; and
 - f. ANSI/NAPM IT9.17.

- B. If bar coding is used, the procedures in technical report AIIM TR12 should be followed.

- C. The COM original must be visually inspected every 10 feet.

- D. Eye-legible titling information must include the following:

1. name of agency;
 2. records series title;
 3. date(s) of records; and
 4. starting and/or ending indexing information.

- E. A reduction ratio not exceeding 48:1 must be used.

- F. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1545. Jacketing

A. All policies for jacketed microfilm are the same as other microfilm formats, except:

1. original microfilm may be placed in a jacket, if there is a security copy stored in the same fashion as original microfilm;

2. jacket header information should include a record identifier (name, number). If no security copy exists, the following must be included in the jacket header information:

- a. name of agency;
- b. records series title;
- c. date(s) of records; and
- d. starting and/or ending indexing information.

B. Header information must be created with a black carbon-type ribbon or ink that will not bleed, spread, or transfer.

C. Microfilm jackets should comply with ANSI/AIIM MS11.

D. The procedures in AIIM TR11 are recommended for the jacketing of film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1547. Aperture Card/CAD Systems

A. Film produced by aperture card/CAD systems are the same as other microfilm formats, except:

1. original microfilm and enclosure should pass the photographic activity test criteria outlined in the standard ANSI IT9.2;

2. a density test and a resolution test must be conducted on a sample of original microfilm at a minimum of once every 250 cards or every 1,000 images, whichever is greater;

3. aperture cards must have the following information on label headings:

- a. name of agency;
- b. records series title;
- c. date(s) of records; and
- d. unique identifier.

B. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1549. Expungements

A. Such action must comply with statutory law.

1. If roll film is spliced, the following information must be inserted in place of the expunged record(s):

a. a start of expungement target;

b. replacement documents for documents that were expunged (if necessary);

c. an expungement certificate containing the following information:

d. the number of the district court ordering the expungement;

e. the signature, printed name, and title of the custodian of expunged records;

f. the date of expungement.

B. Images on film must not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1551. Destruction of Microfilmed Records

A. Microfilmed records must be destroyed only in accordance with R.S. 44:411(A)(2). Microfilmed records scheduled for destruction must be disposed of in a manner that ensures protection for any sensitive or confidential information. Destruction of records on a roll of microfilm containing multiple record series must be done by destroying the whole roll of film at the time the records on the film that have the longest retention period are eligible for destruction or, if filmed prior to the effective date of these standards, by deleting the section of the film containing records eligible for destruction and splicing the film. If the film is spliced, a destruction notice containing the following information must be inserted in place of the deleted records:

1. the record series title and the inclusive dates of the records;

2. the signature and printed name of the agency records management officer (RMO) approving deletion of the records;

3. the date of the deletion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

§1553. Documentation and Record Keeping

A. Microfilm Production

1. Agency records management officer (RMO) must require documentation to be maintained that identifies titles of records filmed, dates records filmed, disposition of records after filming, dates film processed, disposition of film, reduction ratio used, records series contained on each microfilm, and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

B.1. The following information must be recorded for each inspection of stored microfilm:

a. the quantity and identification of microfilm inspected;

b. the condition of the microfilm, including description of any deterioration;

c. any corrective action required;

d. the date(s) of inspection and signed certification of inspector; and

e. the date any corrective action was completed.

2. The inspection log of stored microfilm must be maintained by year and within each year numerically according to microfilm identifier or number.

C. Agency microfilm programs must be reviewed yearly by the agency records management officer (RMO) for compliance with R.S. 44, Chapter 5, and this policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

Family Impact Statement

These proposed Rules LAC 4:XVII (Chapters 1-15) should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

All interested persons may submit written comments through April 10, 2003 to Carrie Fager, State Archives/Records Management, P.O. Box 94125, Baton Rouge, LA 70804-9125.

W. Fox McKeithen
Secretary of State

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Records Management Policies and Practices

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

The anticipated increase or decrease in costs to implement the proposed action cannot be accurately calculated since our office does not have figures on what each state and local agency spends currently on their records and information management program. However, it is likely that some expenses in professional services and equipment charges could be incurred for agencies that have not complied with the provisions of R.S. 44. Once compliant, the savings realized would likely offset any required expenditures.

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

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

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

There are no anticipated costs and/or economic benefits to directly affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

W. Fox McKeithen
Secretary of State
0303#077

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

2003-2004 Resident Game Hunting Seasons
(LAC 76:XIX.101 and 103)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate Rules and regulations governing the hunting of resident game birds and game quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§101. General

A. The Resident Game Hunting Season, 2003-2004 regulations are hereby adopted by the Wildlife and Fisheries Commission. A complete copy of the *Regulation Pamphlet* may be obtained from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:

§103. Resident Game Birds and Animals 2003-2004

A. Shooting Hours. One-half hour before sunrise to one-half hour after sunset.

B. Consult *Regulation Pamphlet* for seasons or specific regulations on Wildlife Management Areas or specific localities.

Species	Season Dates	Daily Bag Limit	Possession Limit
Quail	Nov. 15-Feb. 29	10	20
Rabbit	Oct. 4-Feb. 29	8	16
Squirrel	Oct. 4-Feb. 8	8	16
Deer	See Schedule	1 antlered and 1 antlerless (when legal on private lands)	6/season

C. Deer Hunting Schedule

Area	Archery	Muzzleloader (All Either Sex)	Still Hunt (No Dogs Allowed)	With or Without Dogs
1	Oct. 1 - Jan. 31	Nov. 15-Nov. 21 Jan. 19-Jan. 25	Nov. 22-Dec.5 Jan. 5-Jan.18	Dec. 6- Jan. 4
2	Oct. 1 - Jan. 31	Oct. 25-Oct. 31 Jan. 10-Jan. 16	Nov. 1-Dec. 5	Dec. 6- Jan. 9
3	Sept.13- Jan.15	Oct. 4-Oct.10 Dec. 1-Dec. 5	Oct.11-Nov.30 Dec. 6-Dec.31	
4	Oct. 1 - Jan. 31	Nov. 8-Nov. 14 Jan. 10-Jan. 18	Nov.15-Jan. 9	
5	Oct. 1 - Jan. 31	Nov. 15-Nov. 21 Jan. 10-Jan. 18 Bucks Only	Nov.22- Nov.30	
6	Oct. 1 - Jan. 31	Nov. 15-Nov. 21 Jan. 19-Jan. 25	Nov.22-Dec. 5	Dec. 6- Jan. 18

7	Oct. 1- Jan. 31	Oct. 11-Oct. 17 Nov. 8-Nov. 14	Oct.18-Nov. 7 Nov.15- Nov.30	Dec. 1- Dec.31
8	Sept.13- Jan. 15	Oct. 4-Oct. 10 Dec. 1-Dec. 5	Oct.11-Nov.30	Dec. 6- Dec.31

D. Modern Firearm Schedule (Either Sex Seasons)

Parish	Modern Firearm Either-Sex Days
Acadia	Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 15-16, 22-30
Allen	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Ascension	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Assumption	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Avoyelles	Area 2: Nov. 1-2, 22-23, 28-30, Dec. 6-7
	Area 6: Nov. 22-23, 28-30, Dec. 6-7
Beauregard	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Bienville	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Bossier	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Caddo	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Calcasieu	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Caldwell	Nov. 1-2, 22-23, 28-30, Dec. 6-7
Cameron	Oct. 11-12, 18-19, 25-16, Nov. 1-2, 8-9, 15-16, 22-30
Catahoula	Area 1: Nov. 22-23, 26-30, Dec. 6-7
	Area 2: Nov. 1-2, 22-23, 28-30, Dec. 6-7
Claiborne	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Concordia	Nov. 22-23, 26-30, Dec. 6-7, 13-14, 20-21
DeSoto	Nov. 1-9, 15-16, 22-30, Dec. 6-7
East Baton Rouge	Nov. 22-23, 26-30, Dec. 6-7, 13-14
East Carroll	Nov. 15-16, 22-23, 28-30, Dec. 6-7, 13-14, 20-21, East of mainline Mississippi River Levee and south and east of La. 877 from West Carroll Parish line to La. 580, south of La. 580 to U.S. 65, west of U.S. 65 to Madison Parish line.
	Nov. 15-16, 28-30 the remainder of the parish.
East Feliciana	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Evangeline	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Franklin	Nov. 22-23, 26-30
Grant	Area 1: Nov. 22-23, 26-30, Dec. 6-7
	Area 2: Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
Iberia	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 7: Oct. 18-19, Nov. 15-16, 22-23, 28-30, Dec. 6-7
Iberville	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Jackson	Nov. 1-3, 8-9, 15-16, 22-30, Dec. 6-7
Jefferson	Nov. 22-23, 26-30, Dec. 6-7
Jefferson Davis	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7, 13-14
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Lafayette	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-23, 28-30
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Lafourche	Nov. 22-23, 26-30, Dec. 6-7, 13-14
LaSalle	Area 1: Nov. 22-23, 28-30, Dec. 6-7
	Area 2: Nov. 1-2, 22-23, 28-30, Dec. 6-7
Lincoln	Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
Livingston	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Madison	Nov. 22-23, 26-30, Dec. 6-7, 13-14, 20-21

Parish	Modern Firearm Either-Sex Days
Morehouse	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 4: Nov. 15-16, 28-30
Natchitoches	Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
Orleans	Closed to all deer hunting
Ouachita	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 4: Nov. 15-16, 28-30
Plaquemines	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Pointe Coupee	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Rapides	Area 1: Nov. 22-23, 26-30, Dec. 6-7
	Area 2: Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 28-30, Dec. 6-7
	Area 6: Nov. 22-23, 26-30, Dec. 6-7
Red River	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Richland	Nov. 15-16, 28-30
Sabine	Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
St. Bernard	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Charles	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Helena	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. James	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. John	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Landry	Area 3: Oct. 11-12, Nov. 28-30, Dec. 6-7
	Area 6: Nov. 22-23, 28-30, Dec. 6-7
St. Martin	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Mary	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 7: Oct. 18-19, Nov. 15-16, 22-23, 28-30, Dec. 6-7
St. Tammany	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Tangipahoa	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Tensas	Nov. 22-23, 26-30, Dec. 6-7, 13-14, 20-22
Terrebonne	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 7: Oct. 18-19, Nov. 15-16, 22-23, 28-30, Dec. 6-7
Union	Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
Vermilion	Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 15-16, 22-30
Vernon	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Washington	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Webster	Nov. 1-9, 15-16, 22-30, Dec. 6-7
West Baton Rouge	Nov. 22-23, 26-30, Dec. 6-7, 13-14
West Carroll	Closed
West Feliciana	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Winn	Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7

E. Farm Raised White-tailed Deer on Supplemented Shooting Preserves

Archery	Modern Firearm	Either Sex
Oct. 1-Jan. 31 (Either Sex)	Nov. 1-Jan. 31	Nov. 1-7 Dec. 1-7 Jan. 1-7

F. Exotics on Supplemented Shooting Preserves: Either Sex, no closed season.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), IR 25:1290 (July 1999), repromulgated LR 25:1526 (August 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:

Family Impact Statement

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

Public hearings will be held at the following locations: Region 1C March 11, 7:00 p.m., Minden Civic Center, Minden, Louisiana; Region 2C March 19, 7 p.m., Ruston Civic Center, Ruston, Louisiana; Region 3C March 11, 7 p.m., Alexandria City Hall Convention Center, Alexandria, Louisiana; Region 4C March 12, 7 p.m., Concordia Parish Community Center, Ferriday, Louisiana; Region 5C March 13, 6 p.m., Burton Coliseum, Chalkley Room, Lake Charles, Louisiana; Region 6C March 19, 7 p.m., National Marine Fisheries Building, Suite 119, Lafayette, Louisiana; Region 7C March 10, 7 p.m., Pontchatoula High School auditorium, Pontchatoula, Louisiana. Also comments will be accepted at regularly scheduled Wildlife and Fisheries Commission Meetings from April through July. Interested persons may submit written comments relative to the proposed Rule until Wednesday, May 7, 2003 to Mr. Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Terry D. Denmon
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: 2003-2004 Resident Game Hunting Seasons

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

Establishment of hunting regulations is an annual process. The cost of implementing the proposed Rules, aside from staff time, is the production of the regulations pamphlet. Cost of printing this 2002-2003 state hunting pamphlet was \$124,163 and no major increase in expenditures is anticipated. Local government units will not be impacted.

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

State hunting license fee collections are between 9.0-10.0 million dollars annually. Additionally, hunting and related activities generate approximately \$25.3 million in state sales tax, \$5.1 million in state income tax and \$23 million in local sales tax revenues annually (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting season being established and a potential loss of some of these revenues.

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

Over 300,000 hunters and numerous businesses that provide goods and services to hunters are directly affected by this proposal. Hunting in Louisiana generates in excess of \$581,000,000 annually in retail sales of outdoor related equipment, associated items and trip related expenditures (IAFWA; Southwick Associates, 2002). Failure to adopt Rule

changes would result in no hunting seasons being established and a potential loss of commerce revenues associated with these activities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Hunting in Louisiana provides 9,184 jobs (IAFWA; Southwick Associates, 2002). Not establishing hunting seasons may have a negative and direct impact on these jobs.

James L. Patton
Undersecretary
0303#092

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

General and Wildlife Management Area (WMA) Hunting (LAC 76:XIX.111)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate Rules and regulations governing the hunting of resident game birds and game quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§111. General and Wildlife Management Area Hunting Rules and Regulations

A. Hunting Seasons and Wildlife Management Area Regulations

1. The Rules and regulations contained within this digest have been officially approved and adopted by the Wildlife and Fisheries Commission under authority vested by Sections 115 and 116 of Title 56 of the Louisiana Revised Statutes of 1950 and are in full force and effect in conjunction with all applicable statutory laws. The secretary of the Department of Wildlife and Fisheries has the authority to close or alter seasons in emergency situations in order to protect fish and wildlife resources.

2. Pursuant to Section 40.1 of Title 56 of the Louisiana Revised Statutes of 1950, the Wildlife and Fisheries Commission has adopted monetary values which are assigned to all illegally taken, possessed, injured or destroyed fish, wild birds, wild quadrupeds and other wildlife and aquatic life. Anyone taking, possessing, injuring or destroying fish, wild birds, wild quadrupeds and other wildlife and aquatic life shall be required to reimburse the Department of Wildlife and Fisheries a sum of money equal to the value of the wildlife illegally taken, possessed, injured or destroyed. This monetary reimbursement shall be in addition to any and all criminal penalties imposed for the illegal act.

B. Resident Game Birds and Animals

1. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

C. Other Season Dates

1. Turkey. Please refer to separate pamphlet.

2. Raccoon and Opossum. No closed season. Raccoon and opossum can be taken at night by one or more licensed hunters with one or more dogs and one .22 rimfire firearm. A licensed hunter may take raccoon or opossum with .22

rimfire rifle, .36 caliber or smaller muzzleloader rifle or shotgun during daylight hours during the open rabbit season. Hunting from boats or motor vehicles is prohibited. No bag limit for nighttime or daytime raccoon or opossum hunting during the open trapping season except on certain WMAs as listed. The remainder of the year, the raccoon and opossum bag limit for daytime or nighttime is one per person per day or night. No one who hunts raccoons or opossums as prescribed above shall pelt during the closed trapping season nor sell skins or carcasses of raccoons and opossums taken during the open trapping season unless he is the holder of a valid trapping license which shall be required in addition to his basic hunting license. Pelting or selling carcasses is illegal during closed trapping season.

3. Nutria. On WMAs and private property nutria may be taken recreationally from September 1 through February 29 during legal shooting hours by any legal hunting method with no limit except if taken with a shotgun, steel shot must be used. On WMAs during waterfowl seasons, nutria may be taken only with the use of shotguns with shot no larger than BB lead or F steel, and during gun deer seasons, anyone taking nutria must display 400 square inches of "hunter orange" and wear a "hunter orange" cap or hat. Pelting or selling of carcasses is illegal except when taken by a licensed trapper during the trapping season. Trespass upon private property without consent for the purpose of taking nutria is punishable by fines and possible jail time (R.S. 56:265).

4. Blackbirds and Crows. The season for crows shall be September 1 through January 2 with no limit; however crows, blackbirds, cowbirds and grackles may be taken year round during legal shooting hours if they are depredate or about to depredate upon ornamentals or shade trees, agricultural crops, livestock, wildlife, or when concentrated in such numbers as to cause a health hazard. Louisiana has determined that the birds listed above are crop depredate and that crows have been implicated in the spread of the West Nile virus in humans.

5. Pheasant. Closed.

6. Falconry. Special permit required. Resident and migratory game species except turkeys may be taken. Seasons and bag limits are the same as for statewide and WMA regulations except squirrels may be taken by licensed falconers until the last day of February. Refer to LAC 76:V.301 for specific Falconry Rules.

7. Licensed Hunting Preserve. October 1-April 30. Pen-raised birds only. No limit entire season. Refer to LA C 76:V.305 for specific Hunting Preserve Rules.

8. Deer Management Assistance Program (DMAP). Land enrolled in the voluntary program will be assessed a \$25 registration fee and \$0.05/acre fee. Deer management assistance tags must be in the possession of the hunter and attached and locked to antlerless deer (including those taken on either-sex days and those taken with bow or muzzleloader) through the hock in a manner that it cannot be removed before the deer is moved from the site of the kill. Failure to do so is a violation of R.S. 56:115. Failing to follow DMAP Rules and regulations may result in suspension and cancellation of the program on those lands involved. Refer to LAC 76:V.111 for specific DMAP Rules.

9. Farm Raised White-Tailed Deer and Exotics on Licensed Supplemented Shooting Preserves

a. Definitions

Exotics for purposes of this Rule means any animal of the family Bovidae (except the Tribe Bovini [cattle]) or Cervidae which is not indigenous to Louisiana and which is confined on a Supplemented Hunting Preserve. *Exotics* shall include, but are not limited to, fallow deer, red deer, elk, sika deer, axis deer, and black buck antelope.

Hunting in its different tenses and for purposes of this Rule means to take or attempt to take, in accordance with R.S. 56:8.

Same as Outside for purposes of this Rule means hunting on a Supplemented Hunting Preserve must conform to applicable statutes and Rules governing hunting and deer hunting, as provided for in Title 56 of the Louisiana Revised Statutes and as established annually by the Wildlife and Fisheries Commission (LWFC).

Supplemented Hunting Preserve for purposes of this Rule means any enclosure for which a current Farm-Raising License has been issued by the Department of Agriculture and Forestry (LDAF) with concurrence of the Department of Wildlife and Fisheries (LDWF) and is authorized in writing by the LDAF and LDWF to permit hunting.

White-Tailed Deer for purposes of this Rule means any animal of the species *Odocoileus virginianus* which is confined on a Supplemented Hunting Preserve.

b. Seasons

i. Farm-Raised White-Tailed Deer: Consult the regulations pamphlet.

ii. Exotics: year round.

c. Methods of Take

i. White-Tailed Deer: Same as outside.

ii. Exotics: Exotics may be taken with longbow (including compound bow) and arrow; shotguns not larger than 10 gauge, loaded with buckshot or rifled slug; handguns and rifles no smaller than .22 caliber centerfire; or muzzleloading rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, using black powder or an approved substitute only, and using ball or bullet projectile, including sabot bullets only.

d. Shooting Hours

i. White-Tailed Deer: Same as outside.

ii. Exotics: one-half hour before sunrise to one-half hour after sunset.

e. Bag Limit

i. Farm-Raised White-Tailed Deer: Same as outside.

ii. Exotics: No limit.

f. Hunting Licenses

i. White-Tailed Deer: Same as outside.

ii. Exotics: No person shall hunt any exotic without possessing a valid basic and big game hunting license.

g. Tagging. White-Tailed Deer and Exotics: Each animal shall be tagged in the left ear or left antler immediately upon being killed and before being moved from the site of the kill with a tag provided by the LDAF. The tag shall remain with the carcass at all times.

D. Hunting General Provisions

1. A basic resident or non-resident hunting license is required of all persons to hunt, take, possess or cause to be

transported by any other person any wild bird or quadruped. See information below for exceptions.

2. All persons born on or after September 1, 1969 must show proof of satisfactorily completing a Hunter Safety course approved by LDWF to purchase a Basic Hunting License, except any active or veteran member of the United States armed services or any POST-certified law enforcement officer. Application for the exemption shall be filed in person at the Department of Wildlife and Fisheries main office building in the city of Baton Rouge. A person younger than 16 years of age may hunt without such certificate if he is accompanied by, and is under the direct supervision of a person 18 years of age or older, except during a statewide youth deer hunt, the youth must have satisfactorily completed a Hunter Safety course approved by LDWF to participate.

3. A big game license is required in addition to the basic hunting license to hunt, take, possess or cause to be transported any deer or turkey. A separate wild turkey stamp is required in addition to the basic hunting license and the big game license to hunt, take, possess or cause to be transported any turkey.

4. Taking game quadrupeds or birds from aircraft or participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

5. Methods of Taking Resident Game Birds and Quadrupeds

a. Use of a longbow (including compound bow) and arrow or a shotgun not larger than a 10 gauge fired from the shoulder without a rest shall be legal for taking all resident game birds and quadrupeds. Also, the use of a handgun, rifle and falconry (special permit required) shall be legal for taking all game species except turkey. It shall be illegal to hunt or take squirrels or rabbits at any time with a breech-loaded rifle or handgun larger than a .22 caliber rimfire or a muzzleloader rifle larger than .36 caliber. During closed deer gun season, it shall be illegal to possess shotgun shells loaded with slugs or shot larger than BB lead or F steel shot while small game hunting.

b. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs is prohibited when or where a still hunting season or area is designated, and will be strictly enforced. Shotguns larger than 10 gauge or capable of holding more than three shells shall be prohibited. Plugs used in shotguns must be incapable of being removed without disassembly. Refer to game schedules contained within these regulations for specific restrictions on the use of firearms and other devices.

6. Nuisance Animals. Landowners or their designees may remove beaver and nutria causing damage to their property without a special permit. Water set traps and firearms may be used to remove beaver; nutria may be removed by any means except that nutria cannot be taken by the use of headlight and gun between the hours of sunset and sunrise. With a special permit issued by the department, beavers may be taken between one-half hour after official sunset to one-half hour before official sunrise for a period of three consecutive calendar evenings from the effective date of the permit. For specific details contact a regional office near you. Any nuisance beaver or nutria trapped or shot

outside open trapping season cannot be pelted or sold. A trapping license is required to sell or pelt nuisance beavers or nutria taken during open trapping season. Squirrels found destroying commercial crops of pecans may be taken year-round by permit issued by the department. This permit shall be valid for 30 days from the date of issuance. Contact the local regional office for details.

7. Threatened and endangered species C Louisiana black bear, Louisiana pearl shell (mussel), sea turtles, gopher tortoise, ringed sawback turtle, brown pelican, bald eagle, peregrine falcon, whooping crane, Eskimo curlew, piping plover, interior least tern, ivory-billed woodpecker, red-cockaded woodpecker, Bachman's warbler, West Indian manatee, Florida panther, pallid sturgeon, Gulf sturgeon, Attwater's greater prairie chicken, whales and red wolf. Taking or harassment of any of these species is a violation of state and federal laws.

8. Unregulated Quadrupeds. Holders of a legal hunting license may take coyotes, unmarked hogs where legal, and armadillos year round during legal daylight shooting hours. The running of coyotes with dogs is prohibited in all turkey hunting areas during the open turkey season. Coyote hunting is restricted to "chase only" during still hunting segments of the firearm and archery only season for deer. Foxes and bobcats are protected quadrupeds and may be taken only with traps by licensed trappers during the trapping season. Remainder of the year "chase only" allowed by licensed hunters.

9. Hunting and/or Discharging Firearms on Public Roads. Hunting, standing, loitering or shooting game quadrupeds or game birds with a gun during open season while on a public highway or public road right-of-way is prohibited. Hunting or the discharge of firearms on roads or highways located on public levees or within 100 feet from the centerline of such levee roads or highways is prohibited. Spot lighting or shining from public roads is prohibited by state law. Hunting from all public roads and rights-of-way is prohibited and these provisions will be strictly enforced.

10. Tags. Any part of the deer or wild turkey divided shall have affixed thereto the name, date, address and big game license number of the person killing the deer or wild turkey and the sex of that animal. This information shall be legibly written in pen or pencil, on any piece of paper or cardboard or any material, which is attached or secured to or enclosing the part or parts. On lands enrolled in DMAP, deer management assistance tags must be attached and locked through the hock of antlerless deer, (including those taken with bow, muzzleloader and those antlerless deer taken on either-sex days) in a manner that it cannot be removed, before the deer is moved from the site of the kill.

11. Sex Identification. Positive evidence of sex identification, including the head, shall remain on any deer taken or killed within the State of Louisiana, or on all turkeys taken or killed during any special gobbler season when killing of turkey hens is prohibited, so long as such deer or turkey is kept in camp or field, or is in route to the domicile of its possessor, or until such deer or turkey has been stored at the domicile of its possessor or divided at a cold storage facility and has become identifiable as food rather than as wild game.

E. General Deer Hunting Regulations

1. One antlered and one antlerless (when legal on private lands) deer per day except on Wildlife Management Areas, Federal Refuges and National Forest Lands where the daily limit shall be one deer per day. Six per season (all segments included) by all methods of take.

2. A legal buck is a deer with visible antler of hardened bony material, broken naturally through the skin. Killing bucks without at least one visible antler as described above and killing does is prohibited except where specifically allowed and except in West Baton Rouge and Pointe Coupee Parishes and that portion of Iberville Parish west of the Mississippi River (excluding the Sherburne Wildlife Management Complex and those private lands which are totally surrounded by the Sherburne Complex) where a legal buck shall be defined as a deer with at least six points or a deer with both spikes 3 inches long or less. To be counted as a point, a projection must be at least 1 inch long and its length must exceed the length of its base. The beam tip is counted as a point but not measured as a point.

3. Deer hunting restricted to legal bucks only, except where otherwise allowed.

4. Either-sex deer is defined as male or female deer. Taking or possessing spotted fawns is prohibited.

5. It is illegal to hunt or shoot deer with firearms smaller than .22 caliber centerfire or a shotgun loaded with anything other than buckshot or rifled slug. Handguns may be used for hunting.

6. Taking game quadrupeds or birds from aircraft, participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

7. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs or moving vehicles, including ATVs, when or where a still hunting season or area is designated, is prohibited and will be strictly enforced. The training of deer dogs is prohibited in all still hunting areas during the gun still hunting and archery only season. Deer hunting with dogs is allowed in all other areas having open deer seasons that are not specifically designated as still hunting only. Except in wildlife management areas, a leashed dog may be used to trail and retrieve wounded or unrecovered deer during legal hunting hours. Any dog used to trail or retrieve wounded or unrecovered deer shall have on a collar with owner's name, address, and phone number. In addition, a dog may be used to trail and retrieve unrecovered deer after legal hunting hours; however, no person accompanying a dog after legal hunting hours may carry a firearm of any sort.

8. Areas not specifically designated as open are closed.

9. Muzzleloader Segment: (Special license and muzzleloader firearms specifications apply only to the special state, WMA, National Forest and Preserves, and Federal Refuge seasons.) Still hunt only. Specific WMAs will also be open, check WMA schedule for specific details. Muzzleloader license required for resident hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Either-sex deer may be taken in all deer hunting areas except Area 5 and as specified on Public Areas. It is unlawful to carry a gun, other than a muzzleloader, including those powered by air or other means, while hunting during the special muzzleloader

segment. Except, it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot only).

a. Legal Muzzleloader Firearms for Special Season: Rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, use black powder or approved substitute only, take ball or bullet projectile only, including sabot bullets and may be fitted with magnified scopes. This includes muzzleloaders known as "inline" muzzleloaders.

10. Archery Segment: Consult regulations pamphlet. WMA seasons are the same as outside except as noted below. Archery license required for resident bow hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Residents 60 years of age and older may use a crossbow without a special permit or license. Either-sex deer may be taken in all areas open for deer hunting except when a bucks only season is in progress for gun hunting, archer's must conform to the bucks only regulations. Either-sex deer may be taken on WMAs at anytime during archery season except when bucks only seasons are in progress on the respective WMA. Also, archery season restricted on Atchafalaya Delta, Salvador, Lake Boeuf, and Pointe-aux-Chenes WMAs (see schedule).

a. Bow and arrow regulations: Hunting arrows for deer must have well-sharpened metal broadhead blades not less than 7/8 inch in width. Bow and arrow fishermen must have a sport fishing license and not carry any arrows with broadhead points unless a big game season is in progress.

i. It is unlawful:

(a). to carry a gun, including those powered by air or other means, while hunting with bow and arrow during the special bow and arrow deer season except it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot) only;

(b). to have in possession or use any poisoned or drugged arrow, arrows with explosive tips, or any bow drawn, held or released by mechanical means except that hand held releases are lawful;

(c). to hunt deer with a bow having a pull less than 30 pounds;

(d). to hunt with a bow or crossbow fitted with an infrared or laser sight.

11. Hunter Orange. Any person hunting deer shall display on his head, chest and/or back a total of not less than 400 square inches of "hunter orange" during the open deer gun season including muzzleloader season. Persons hunting on privately owned, legally posted land may wear a hunter orange cap or hat in lieu of the 400 square inches. These provisions shall not apply to persons hunting deer from elevated stands on property that is privately owned and legally posted or to archery deer hunters hunting on legally posted lands where firearm hunting is not allowed by agreement of the landowner or lessee. However, anyone hunting deer on such lands where hunting with firearms is allowed shall be required to display the 400 square inches or a hunter orange cap or hat while walking to and from elevated stands. While a person is hunting from an elevated stand, the 400 square inches or cap or hat may be concealed. Warning: deer hunters are cautioned to watch for persons hunting other game or engaged in activities not requiring "hunter orange."

12. Special Handicapped Either-Sex Deer Season on Private Land. See regulations pamphlet for dates. Restricted to individuals with Physically Challenged Hunter Permit.

13. Special Youth Deer Hunt on Private Lands (Either-Sex). See regulations pamphlet for dates. Youth must be under the age of 16, must have proof of successfully completing a Department approved hunter safety course, and must be accompanied by an adult licensed to hunt big game. In West Baton Rouge and Pointe Coupee Parishes and that portion of Iberville Parish west of the Mississippi River antler restrictions for bucks shall be waived.

F. Description of Areas

1. Area 1

a. All of the following parishes are open: East Feliciana, St. Helena, Concordia, Franklin, Tensas, East Baton Rouge, Madison, Washington.

b. Portions of the following parishes are also open:

i. CatahoulaCAll except that portion lying west of Boeuf River from Caldwell parish line to Ouachita River, north and east of Ouachita River to La. 559 at Duty Ferry, west of La. 559 to La. 124. North and west of La. 124 westward to LaSalle parish line.

ii. GrantCEast of U.S. 165 and south of La. 8.

iii. LaSalleCPortion south of La. 8 from Little River eastward to La. 127 in Jena, east of La. 127 from Jena northward to U.S. 165, east of U.S. 165 from La. 127 northward to La. 124. South of La. 124 eastward to Catahoula Parish line.

iv. LivingstonCNorth of I-12.

v. RapidesCEast of U.S. 165 and north of Red River.

vi. St. TammanyCAll except that portion south of I-12, west of Hwy. 1077 to La. 22, south of La. 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain.

vii. TangipahoaCNorth of I-12.

viii. West FelicianaCAll except that portion known as Raccourci and Turnbull Island.

c. Still hunting only in all or portions of the following parishes:

i. CatahoulaCSouth of Deer Creek to Boeuf River, east of Boeuf and Ouachita Rivers to La. 8 at Harrisonburg, west of La. 8 to La. 913, west of La. 913 and La. 15 to Deer Creek.

ii. East Feliciana and East Baton RougeCEast of Thompson Creek from the Mississippi state line to La. 10. North of La. 10 from Thompson Creek to La. 67 at Clinton, west of La. 67 from Clinton to Mississippi state line. South of Mississippi state line from La. 67 to Thompson Creek. Also that portion of East Baton Rouge Parish east of La. 67 from La. 64 north to Parish Line, south of Parish Line from La. 64 eastward to Amite River. West of Amite River southward to La. 64, north of La. 64 to La. 37 at Magnolia, east of La. 37 northward to La. 64 at Indian Mound, north of La. 64 from Indian Mound to La. 67. Also, that portion of East Feliciana Parish east of La. 67 from parish line north to La. 959, south of La. 959 east to La. 63, west of La. 63 to Amite River, west of Amite River, southward to parish line, north of parish line westward to La. 67.

iii. FranklinCAll

iv. St. HelenaCNorth of La. 16 from Tickfaw River at Montpelier westward to La. 449, east and south of

La. 449 from La. 16 at Pine Grove northward to La. 1045, south of La. 1045 from its junction with La. 449 eastward to the Tickfaw River, west of the Tickfaw River from La. 1045 southward to La. 16 at Montpelier.

v. TangipahoaCThat portion of Tangipahoa Parish north of La. 10 from the Tchefuncte River to La. 1061 at Wilmer, east of La. 1061 to La. 440 at Bolivar, south of La. 440 to the Tchefuncte River, west of the Tchefuncte River from La. 440 southward to La. 10.

vi. Washington and St. TammanyCEast of La. 21 from the Mississippi state line southward to the Bogue Chitto River, north of the Bogue Chitto River from La. 21 eastward to the Pearl River Navigation Canal, east of the Pearl River Navigation Canal southward to the West Pearl River, north of the West Pearl River from the Pearl River Navigation Canal to Holmes Bayou, west of Holmes Bayou from the West Pearl River northward to the Pearl River, west of the Pearl River from Holmes Bayou northward to the Mississippi state line, south of the Mississippi state line from the Pearl River westward to La. 21. Also, that portion of Washington Parish west of La. 25 from the Mississippi state line southward to the Bogue Chitto River, then west of the Bogue Chitto River to its junction with the St. Tammany Parish line, north of the St. Tammany Parish line to the Tangipahoa Parish line, east of the Tangipahoa Parish line to the Mississippi state line, south of the Mississippi state line to its junction with La. 25.

vii. West FelicianaCWest of Thompson Creek to Illinois-Central Railroad, north of Illinois-Central Railroad to Parish Road #7, east of Parish Road #7 to the junction of U.S. 61 and La. 966, east of La. 966 from U.S. 61 to Chaney Creek, south of Chaney Creek to Thompson Creek.

2. Area 2

a. All of the following parishes are open:

i. Bienville, Jackson, Union, Bossier, Lincoln, Webster, Caddo, Natchitoches, Winn, Claiborne, Red River, DeSoto, Sabine, Caldwell.

ii. except: Kisatchie National Forest which has special regulations. Caney, Corney, Middlefork tracts of Kisatchie have the same regulations as Area 2, except still hunting only for deer and except National Forest Land within the Evangeline Unit, Calcasieu Ranger District described in Area 2 description shall be still hunting only.

b. Portions of the following parishes are also open:

i. AllenCNorth of U.S. 190 from the parish line westward to Kinder, east of U.S. 165 from Kinder northward to La. 10 at Oakdale, north of La. 10 from Oakdale, westward to the parish line;

ii. AvoyellesCThat portion west of I-49.

iii. CatahoulaCThat portion lying west of Boeuf River from Caldwell parish line to Ouachita River, north and east of Ouachita River to La. 559 at Duty Ferry. West of La. 559 to La. 124. North and west of La. 124 westward to LaSalle parish line.

iv. EvangelineCAll except the following portions: east of I-49 to junction of La. 29, east of La. 29 south of I-49 to Ville Platte, and north of U.S. 167 east of Ville Platte.

v. GrantCAll except that portion south of La. 8 and east of U.S. 165.

vi. Jefferson Davis CNorth of U.S. 190.

vii. LaSalleCAll except south of La. 8 from Little River eastward to La. 127 in Jena, east of La. 127 from Jena northward to U.S. 165, east of U.S. 165 from La. 127 northward to La. 124. South of La. 124 eastward to Catahoula parish line.

viii. MorehouseCWest of U.S. 165 (from Arkansas state line) to Bonita, north and west of La. 140 to junction of La. 830-4 (Cooper Lake Road), west of La. 830-4 to Bastrop, west of La. 139 to junction of La. 593, west and south of La. 593 to Collinston, west of La. 138 to junction of La. 134 and north of La. 134 to Ouachita line at Wham Brake.

ix. OuachitaCAll except south of U.S. 80 and east of Ouachita River, east of La. 139 from Sicard to junction of La. 134, south of La. 134 to Morehouse line at Wham Brake.

x. RapidesCAll except north of Red River and east of U.S. 165. South of La. 465 to junction of La. 121, west of La. 121 and La. 112 to Union Hill, and north of La. 113 from Union Hill to Vernon Parish line, and that portion south of Alexandria between Red River and U.S. 167 to junction of U.S. 167 with I-49 at Turkey Creek exit, east of I-49 southward to parish line.

xi. VernonCNorth of La. 10 from the parish line westward to La. 113, south of La. 113 eastward to the parish line. Also the portion north of La. 465, west of La. 117 from Kurthwood to Leesville, and north of La. 8 from Leesville to Texas state line.

c. Still hunting only in all or portions of the following parishes:

i. Claiborne and WebsterCCaney, Corney and Middlefork tracts of Kisatchie National Forest. (See Kisatchie National Forest Regulations);

ii. OuachitaCEast of Ouachita River;

iii. RapidesCWest of U.S. 167 from Alexandria southward to I-49 at Turkey Creek Exit, west of I-49 southward to Parish Line, north of Parish Line westward to U.S. 165, east of U.S. 165 northward to U.S. 167 at Alexandria. North of La. 465 from Vernon Parish line to La. 121, west of La. 121 to I-49, west of I-49 to La. 8, south and east of La. 8 to La. 118 (Mora Road), south and west of La. 118 to Natchitoches Parish line;

iv. VernonCEast of Mora-Hutton Road from Natchitoches Parish line to Hillman Loop Road, south and east of Hillman Loop Road to Comrade Road, south of Comrade Road to La. 465, east and north of La. 465 to Rapides Parish line.

3. Area 3

a. All of Acadia, Cameron and Vermilion Parishes are open.

b. Portions of the following parishes are also open:

i. AllenCSouth of U.S. 190 and west of La. 113;

ii. BeauregardCWest of La. 113. Also east of La. 27 from the parish line north to DeRidder and north of U.S. 190 westward from DeRidder to Texas line;

iii. CalcasieuCSouth of U.S. 90. Also east of La. 27 from Sulphur northward to the parish line;

iv. IberiaCWest of U.S. 90 and north of La. 14;

v. Jefferson Davis CAll except north of U.S. 190;

vi. LafayetteCWest of I-49 and U.S. 90;

vii. RapidesCSouth of La. 465 to junction of La. 121, west of La. 121 and La. 112 to Union Hill and north of La. 113 from Union Hill to Vernon Parish line;

viii. St. LandryCWest of U.S. 167;

ix. VernonCWest and north of La. 113, south of La. 465, east of La. 117 from Kurthwood to Leesville, and south of La. 8 from Leesville to Texas state line.

4. Area 4

a. All of East Carroll and Richland parishes are open.

b. Portions of the following parishes are open:

i. MorehouseCEast of U.S. 165 (from Arkansas state line) to Bonita, south and east of La. 140 to junction of La. 830-4 (Cooper Lake Road), east of La. 830-4 to Bastrop, east of La. 139 at Bastrop to junction of La. 593, east and north of La. 593 to Collinston, east of La. 138 to junction of La. 134 and south of La. 134 to Ouachita line at Wham Brake.

ii. OuachitaCSouth of U.S. 80 and east of Ouachita River, east of La. 139 from Sicard to junction of La. 134, south of La. 134 to Morehouse line at Wham Bake.

5. Area 5

a. All of West Carroll Parish is open.

i. All deer hunting with firearms is for bucks only including muzzleloader season.

6. Area 6

a. All of Orleans Parish is closed to all forms of deer hunting.

b. All of the following parishes are open: Ascension, Plaquemines, St. John, Assumption, Pointe Coupee, St. Martin, Iberville, St. Bernard, Jefferson, St. Charles, Lafourche, St. James, West Baton Rouge.

c. Portions of the following parishes are also open:

i. AvoyellesCAll except that portion west of I-49;

ii. EvangelineCthat portion east of I-49 to junction of La. 29, east of La. 29 south of I-49 to Ville Platte and north of U.S. 167 east of Ville Platte;

iii. IberiaCEast of U.S. 90;

iv. LafayetteCEast of I-49 and U.S. 90;

v. LivingstonCSouth of I-12;

vi. RapidesCSouth of Alexandria between Red River and U.S. 167 to the junction of U.S. 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line;

vii. St. LandryCEast of U.S. 167;

viii. St. MaryCnorth of U.S. 90;

ix. St. TammanyCthat portion south of I-12, west of Hwy. 1077 to La. 22, south of La. 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain;

x. TangipahoaCSouth of I-12;

xi. TerrebonneCnorth of La. 182 from Assumption Parish line eastward to Houma, east of Houma Navigation Canal southward to the Gulf of Mexico;

xii. West FelicianaCwest of Mississippi River, known as Raccourci and Turnbull Islands;

d. Still hunting only in all or portions of the following parishes:

i. AvoyellesCnorth of La. 1 from Simmesport westward to La. 115 at Marksville, east of La. 115 from Marksville northward to the Red River near Moncla, south and west of the Red River to La. 1 at Simmesport;

ii. PlaqueminesCEast of the Mississippi River;

iii. RapidesCSouth of Alexandria between Red River and U.S. 167 to the junction of U.S. 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line;

iv. St. Bernard Call the parish shall be still hunting only except that portion of St. Bernard known as the spoil area between the MRGO on the east and Access Canal on the west, south of Bayou Bienvenue and north of Bayou la Loutre;

v. St. John South of Pass Manchac from Lake Pontchartrain to U.S. 51, east of U.S. 51 from Pass Manchac to La. 638 (Frenier Beach Road). North of La. 638 from U.S. 51 to Lake Pontchartrain. West of Lake Pontchartrain from La. 638 to Pass Manchac.

vi. St. Landry Those lands surrounding Thistlethwaite WMA bounded north and east by La. 359, west by La. 10, and south by La. 103.

7. Area 7

a. Portions of the following parishes are open:

i. Iberia and St. Mary Parishes South of La. 14 and west U.S. Hwy. 90.

ii. Terrebonne South of La. 182 from Assumption Parish line eastward to Houma, west of Houma Navigation Canal southward to the Gulf of Mexico.

8. Area 8

a. Portions of the following parishes are open:

i. Allen That portion east of La. 113 from the parish line to U.S. 190, north of U.S. 190 eastward to Kinder, west of U.S. 165 northward to La. 10 at Oakdale and south of La. 10 from Oakdale westward to parish line;

ii. Vernon That portion east of La. 113 from the parish line northward to Pitkin, and south of La. 10 from Pitkin southward to the parish line;

iii. Beauregard That portion east of La. 113. Also that portion west of La. 27 from parish line northward to DeRidder, south of U.S. 190 from DeRidder to Texas state line;

iv. Calcasieu That portion east of La. 27 from the parish line southward to Sulphur and north of U.S. 90 from Sulphur to the Texas state line.

G Wildlife Management Area Regulations

1. General

a. The following Rules and regulations concerning the management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject individual to citation and/or expulsion from the management area.

b. Citizens are cautioned that by entering a WMA managed by the LDWF they may be subjecting themselves and/or their vehicles to game and/or license checks, inspections and searches.

c. Wildlife management area seasons may be altered or dosed anytime by the Department Secretary in emergency situations (floods, fire or other critical circumstances).

d. Hunters may enter the WMA no earlier than 3:00 a.m. unless otherwise specified. On days when Daily permits are required, permit stations will open 2 hours before legal shooting hours. Hunters must check out and exit the WMA no later than two hours after sunset, except for Lake Boeuf, Salvador/Timken and Pointe-aux-Chenes or as otherwise specified.

e. Lands within WMA boundaries will have the same seasons and regulations pertaining to baiting and use of dogs as the WMA within which the lands are enclosed; however, with respect to private lands enclosed within a WMA, the owner or lessee may elect to hunt deer according to the regular season dates applicable to the geographic area in which the lands are located, provided that the lands are first enrolled in DMAP. Interested parties should contact the nearest LDWF regional office for additional information.

f. Dumping garbage or trash on WMAs is prohibited. Garbage and trash may be properly disposed of in designated locations if provided.

g. Disorderly conduct or hunting under influence of alcoholic beverages, chemicals and other similar substances is prohibited.

h. Commercial activities prohibited without prior approval or unless otherwise specified.

i. Damage to or removal of trees, shrubs, hard mast (acorn, pecans, etc.) and wild plants is prohibited without prior approval. Gathering and/or removal of soft fruits, mushrooms and berries shall be limited to five gallons per person per day. Persons engaged in commercial activities must obtain a permit from the Region Office.

j. Burning of marshes is prohibited except by permit. Permits may be obtained from the Fur and Refuge Division. Hunting actively burning marsh prohibited.

k. Nature Trails. Access to trails shall be limited to pedestrians only. No vehicles, ATVs, horses, mules, bicycles, etc. allowed. Removal of vegetation (standing or down) or other natural material prohibited.

l. Deer seasons are for legal buck deer unless otherwise specified.

m. Small game, when listed under the WMA regulations may include both resident game animals and game birds as well as migratory species of birds.

n. Oysters may not be harvested from any WMA, except that oysters may be harvested from private oyster leases and State Seed Grounds located within a WMA, when authorized by the Wildlife and Fisheries Commission and upon approval by the Department of Health and Hospitals.

o. Free ranging livestock prohibited.

2. Permits

a. Daily. Daily permits when required shall be obtained at permit stations on or near each WMA after first presenting a valid hunting license to a Department employee. Hunters must retain permit in possession while hunting. Hunters may enter the area no earlier than two hours before legal shooting time unless otherwise specified. Hunters must checkout daily and exit the area not later than two hours after sunset unless otherwise specified.

b. Self-Clearing Permits. A Self-Clearing Permit is required for all activities (hunting, fishing, hiking, birdwatching, sightseeing, etc.) on WMAs unless otherwise specified. The Self-Clearing Permit will consist of three portions: check in, check out and a Vehicle Tag. On WMAs where Self-Clearing Permits are required, all persons must obtain a WMA Self-Clearing Permit from an Information Station. The check in portion must be completed and put in a permit box before each day's activity on the day of the activity. Users may check-in one day in advance of use. The check out portion must be carried by each person while on

the WMA and must be completed and put in a permit box immediately upon exiting the WMA or within 72 hours after checking in if hunting from a camp. Each person must leave the Vehicle Tag portion of his permit on the dashboard of the vehicle used to enter into the WMA in such a way that it can be easily read from outside of the vehicle. This must be done only when the vehicle is parked and left unattended on the WMA. If an ATV, boat or other type vehicle was used to enter the WMA, then the vehicle tag must be attached to that vehicle in such a manner that it can be readily seen and read. No permit is required of fishers and boaters who do not travel on a WMA road and/or launch on the WMA as long as they do not get out of the boat and onto the WMA. When Mandatory Deer Checks are specified on WMAs, hunters must check deer at a check station. Call the appropriate Region office for the location of the deer check station on these WMAs. (Self-Clearing Permits are not required for persons only traveling through the WMA provided that the most direct route is taken and no activities or stops take place.)

c. Wild Louisiana Stamp. Persons using WMAs or other department administered lands for purposes other than hunting and fishing, such as camping, shooting on rifle ranges, berry picking, hiking, photography, bird-watching and the like, must possess one of the following: a valid Wild Louisiana stamp, a valid Louisiana fishing license, or a valid Louisiana hunting license. Persons younger than 16 or older than 60 years of age are exempt from this requirement.

3. Special Seasons

a. Youth Deer Hunt. Only youths younger than 16 years of age may hunt. All other seasons are closed except Handicapped Seasons. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of a hunter safety certification, a valid Louisiana hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. Legal firearms are the same as described for deer hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Contact the appropriate region office for special check station locations when daily permits are required and maps of specific hunting areas. Either-sex deer may be taken on WMAs with youth hunts. Consult the regulations pamphlet for WMAs offering youth hunts.

b. Handicapped Season. For hunters possessing a Physically Challenged Hunter Permit only. Participants must possess a Physically Challenged Hunter Permit. Contact region office for permit application and map of specific hunting area. Consult the regulations pamphlet for WMAs offering Handicapped Seasons. Pointe-aux-Chenes will have an experimental Lottery Handicapped waterfowl hunt. Contact New Iberia Office, Fur and Refuge Division for details.

c. Deer Lottery Hunts. Hunts restricted to those persons selected as a result of the pre-application lottery. Consult the regulations pamphlet for deadlines. A non-refundable application fee must be sent with application.

Contact region offices for applications. Consult regulations pamphlet for WMAs offering lottery hunts.

d. Turkey Lottery Hunts. Hunts restricted to those persons selected by lottery. Consult the regulations pamphlet for deadlines. All turkeys must be reported at Self Clearing station. Contact Region Offices for more details. Consult separate Turkey Hunting Regulations pamphlet for WMAs offering lottery hunts.

e. Trapping. Permits to take fur bearers from WMAs may be obtained at appropriate offices when required. Consult Annual Trapping Regulations for specific dates. All traps must be run daily. Traps with teeth are illegal. On WMAs where permits are required, each trapper must submit an annual trapping report to the Region Office where his permit was obtained. Non-compliance will result in forfeiture of trapping privileges on the WMAs. Permits may be obtained only between hours of 8 a.m. to 4:30 p.m. on normal working days at region offices. Hunter orange required when a deer gun season is in progress. A permit is required to carry a firearm outside of the normal hunting season and is available at the Region Office.

f. Raccoon Hunting. A licensed hunter may take raccoon or opossum, one per person per day, during daylight hours only, during the open rabbit season on WMAs. Nighttime Experimental Season dates for specific WMAs are for nighttime raccoon hunting and permits may be required. There is no bag limit for raccoons at night unless specified in the annual regulations pamphlet. Raccoon hunters with dogs must submit an annual report of their kill to the region office for WMAs where permits are required. Non-compliance will result in forfeiture of raccoon or all hunting privileges on WMAs. Permits, when required, may be obtained at region offices only between hours of 8 a.m. to 4:30 p.m. on normal working days.

g. Commercial Fishing. Permits are required of all commercial fishermen using Grassy Lake, Pomme de Terre and Spring Bayou WMAs. Drag seines (except minnow and bait seines) are prohibited except experimental bait seines allowed on Dewey Wills WMA north of La. 28 in Diversion Canal. Commercial fishing is prohibited during regular waterfowl seasons on Grand Bay, Silver Lake and Lower Sunk Lake on Three Rivers WMA. Commercial fishing is prohibited on Salvador/Timken, Ouachita and Pointe-aux-Chenes WMAs except commercial fishing on Pointe-aux-Chenes is allowed in Cut Off Canal and Wonder Lake. No commercial fishing activity shall impede navigation and no unattended vessels or barges will be allowed. Non-compliance with permit regulations will result in revocation of commercial fishing privileges for the period the license is issued and one year thereafter. Commercial fishing is allowed on Pass-a-Loutre and Atchafalaya Delta WMAs. See Pass-a-Loutre for additional commercial fishing regulations on mullet.

h. Sport Fishing. Sport fishing, crawfishing and frogging are allowed on WMAs when in compliance with current laws and regulations except as otherwise specified under individual WMA listings.

i. Additional Department Lands. The Department manages additional lands that are included in the WMA system and available for public recreation. Small tracts are located in Rapides, Vernon, Evangeline, St. Helena and other parishes. These small tracts have been acquired from the

Farmers Home Administration or other sources for conservation purposes. Contact the appropriate Wildlife and Fisheries Region Office for specific information and any additional season dates.

4. Firearms

a. Firearms having live ammunition in the chamber, magazine, cylinder or clip when attached to firearms are not allowed in or on vehicles, boats under power, motorcycles, ATVs, ATCs or in camping areas on WMAs. Firearms may not be carried on any area before or after permitted hours except in authorized camping areas.

b. Firearms and bows and arrows are not allowed on WMAs during closed seasons except on designated shooting ranges or as permitted for trapping. Bows and broadhead arrows are not allowed on WMAs except during deer archery season, turkey season or as permitted for bowfishing.

c. Encased or broken down firearms and any game harvested may be transported through the areas by the most direct route provided that no other route exists except as specified under Wildlife Management Area listing.

d. Loaded firearms are not allowed near WMA check stations.

e. Centerfire rifles and handguns larger than .22 caliber rimfire, shotgun slugs or shot larger than BB lead or F steel shot cannot be carried onto any WMA except during modern firearm deer season.

f. Target shooting and other forms of practice shooting are prohibited on WMAs except as otherwise specified.

g. Discharging of firearms on or hunting from designated roads, ATV trails or their rights-of-way is prohibited during the modern firearm and muzzleloader deer season.

5. Methods of Taking Game

a. Moving deer or hogs on a WMA with organized drivers and standers, drivers or making use of noises or noise-making devices is prohibited.

b. On Wildlife Management Areas, Federal Refuges and National Forest Lands the daily limit shall be one deer per day, six per season (all segments included) by all methods of take.

c. Baiting or hunting over bait is prohibited on all WMAs (hogs included). Unmarked hogs may be taken on some WMAs by properly licensed hunters from the beginning of archery season on the area until February 29 and only with guns/ammunition or bow and arrow legal for specified seasons in progress. Consult the specific WMA for additional information. Proper licenses and permits are required for hunting.

d. Hunters who kill deer on WMAs that require daily permits must have deer checked at the check station on same day of kill. Deer may not be skinned or have any external body parts removed including but not limited to feet, legs, tail, head or ears before being checked out.

e. Deer hunting on WMAs is restricted to still hunting only. No WMA will be open for deer during early still hunt season unless specified in the regulation pamphlet.

f. Construction of and/or hunting from permanent tree stands or permanent blinds on WMAs is prohibited. Any permanent stand or permanent blind will be removed and destroyed.

g. On Wildlife Management Areas and Refuges, all deer stands must be removed from the area no later than two hours after the end of legal shooting hours each day. Hunting from utility poles, high tension power lines, oil and gas exploration facilities or platforms is prohibited.

h. A permanent blind is any blind using non-natural materials or having a frame which is not dismantled within two hours after the end of legal shooting time each day. Blinds with frames of wood, plastic, metal, poles, wire, mesh, webbing or other materials may be used but must be removed from the WMA within two hours after the end of legal shooting time each day. Blinds made solely of natural vegetation and not held together by nails or other metallic fasteners may be left in place but cannot be used to reserve hunting locations. All decoys must be removed from the WMA daily.

i. It is illegal to save or reserve hunting locations using permanent stands or blinds. Stands or blinds attached to trees with screws, nails, spikes, etc. are illegal.

j. Tree climbing spurs, spikes or screw-in steps are prohibited.

k. Unattended decoys will be confiscated and forfeited to the Department of Wildlife and Fisheries and disposed of by the Department. This action is necessary to prevent preemption of hunting space.

l. Hunters shall not hunt, take or pursue birds or animals from moving vehicles on any WMA. No person shall take birds or animals from or by any motor boat or sail boat unless the motor has been completely shut off and/or the sail furled and its progress therefrom has ceased.

m. Spot lighting (shining) from vehicles is prohibited on all WMAs.

n. Horses and mules may be ridden on Wildlife Management Areas except where prohibited and except during gun seasons for deer and turkey. Riding is restricted to designated roads and trails. Hunting and trapping from horses and mules is prohibited except for quail hunting or as otherwise specified.

o. All hunters except waterfowl hunters and dove hunters (including archers and small game hunters) on WMAs must display 400 square inches of "Hunter Orange" and wear a "Hunter Orange" cap during open gun season for deer. Quail hunters, woodcock hunters and archers (while on the ground) as well as hunters participating in special dog seasons for rabbit and squirrel are required to wear a minimum of a "Hunter Orange" cap. Also all persons afield during hunting seasons are encouraged to display "Hunter Orange."

p. Archery Season for Deer. The archery season on WMAs is the same as outside and is open for either sex deer except as otherwise specified on individual WMAs. Archery season restricted on Atchafalaya Delta and closed on certain WMAs when special seasons for youth or handicapped hunts are in progress. Consult regulations pamphlet for specific seasons.

q. Either sex deer may be taken on WMAs at any time during archery season except when bucks only seasons are in progress on the respective WMAs. Archers must abide by bucks only regulations and other restrictions when such seasons are in progress.

r. Muzzleloader Season for Deer. Either sex unless otherwise specified. See WMA deer schedule.

6. Camping

a. Camping on WMAs, including trailers, houseboats, recreational vehicles and tents, is allowed only in designated areas and for a period not to exceed sixteen 16 consecutive days, regardless if the camp is attended or unattended. Houseboats shall not impede navigation. At the end of the 16 day period, camps must be removed from the area for at least 48 hours. Camping area use limited exclusively to outdoor recreational activities.

b. Houseboats are prohibited from overnight mooring within WMAs except on stream banks adjacent to Department-owned designated camping areas. Overnight mooring of vessels that provide lodging for hire are prohibited on WMAs. On Atchafalaya Delta WMA and Pass-a-Loutre, houseboats may be moored in specially designated areas throughout the hunting season. At all other times of the year, mooring is limited to a period not to exceed 16 consecutive days. Permits are required for the mooring of houseboats on Pass-a-Loutre and Atchafalaya Delta WMAs. Permits must be obtained from the New Iberia office.

c. Discharge of human waste onto lands or waters of any WMA is strictly prohibited by State and Federal law. In the event public restroom facilities are not available at a WMA, the following is required. Anyone camping on a WMA in a camper, trailer, or other unit (other than a houseboat or tent) shall have and shall utilize an operational disposal system attached to the unit. Tent campers shall have and shall utilize portable waste disposal units and shall remove all human waste from the WMA upon leaving. Houseboats moored on a WMA shall have a permit or letter of certification from the Health Unit (Department of Health and Hospitals) of the parish within which the WMA occurs verifying that it has an approved sewerage disposal system on board. Further, that system shall be utilized by occupants of the houseboats when on the WMA.

d. No refuse or garbage may be dumped from these boats.

e. Firearms may not be kept loaded or discharged in a camping area.

f. Campsites must be cleaned by occupants prior to leaving and all refuse placed in designated locations when provided or carried off by campers.

g. Non-compliance with camping regulations will subject occupant to immediate expulsion and/or citation, including restitution for damages.

h. Swimming is prohibited within 100 yards of boat launching ramps.

7. Restricted Areas

a. All oil and gas production facilities (wells, pumping stations and storage facilities) are off limits.

b. No unauthorized entry or hunting in restricted areas or refuges.

8. Dogs. All use of dogs on WMAs, except for bird hunting and duck hunting, is Experimental as required by law. Having or using dogs on any WMA is prohibited except for nighttime experimental raccoon hunting, squirrel hunting, rabbit hunting, bird hunting, duck hunting and bird dog training when allowed; see individual WMA season listings for WMAs that allow dogs and dates. Dogs running at large are prohibited on WMAs. The owner or handler of said dogs shall be liable. Only recognizable breeds of bird

dogs and retrievers are allowed for quail and migratory bird hunting. Only beagle hounds which do not exceed 15 inches at the front shoulders and which have recognizable characteristics of the breed may be used on WMAs having experimental rabbit seasons.

9. Vehicles

a. An all-terrain vehicle is an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 pounds, length 85 inches, and width 48 inches. ATV tires are restricted to those no larger than 25 x 12 with a maximum finch lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

b. Vehicles having wheels with a wheel-tire combination having a radius of 17 inches or more from the center of the hub (measured horizontal to ground) are prohibited.

c. The testing, racing, speeding or unusual maneuvering of any type of vehicle is prohibited within wildlife management areas due to property damages resulting in high maintenance costs, disturbance of wildlife and destruction of forest reproduction.

d. Tractor or implement tires with farm tread designs R1, R2 and R4 known commonly as spade or lug grip types are prohibited on all vehicles.

e. Airboats, aircraft, personal water craft and hover craft are prohibited on all WMAs and Refuges. Personal water craft are defined as a vessel which uses an inboard motor powering a water jet pump as its primary source of propulsion and is designed to be operated by a person sitting, standing or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel. Personal water craft allowed on designated areas of Alexander State Forest WMA.

f. No internal combustion engines allowed in certain Greentree reservoirs.

g. Driving or parking vehicles on food or cover plots and strips is prohibited.

h. Blocking the entrance to roads and trails is prohibited.

i. Motorized vehicles, including ATVs, and motorcycles, are restricted entirely to designated roads and ATV trails as indicated on WMA maps. WMA maps available at all region offices. This restriction does not apply to bicycles.

j. Use of special ATV trails for handicapped persons is restricted to special ATV handicapped permittees. Handicapped ATV permittees are restricted to handicapped ATV trails or other ATV trails only as indicated on WMA maps. Persons 60 years of age and older, with proof of age, are also allowed to use special handicapped trails and need not obtain a permit. However, these persons must abide by all Rules in place for these trails. Handicapped persons should make application for a Physically Challenged Hunter Program Permit with the Department.

k. Entrances to ATV trails will be marked with peach colored paint. Entrances to handicapped-only ATV trails will be marked with blue colored paint. Routes of all trails are as indicated on WMA maps. Deviation from the trails indicated on the map constitutes a violation of WMA Rules and regulations.

l. Roads and trails may be closed due to poor condition, construction or wet weather.

m. ATVs, and motorcycles cannot be left overnight on WMAs except on designated camping areas. ATVs are prohibited from two hours after sunset to 3 a.m.. ATVs are prohibited from March 1 through August 31 except certain trails may be open during this time period to provide access for fishing or other purpose. These trails will be marked by signs at the entrance of the trail and designated on WMA maps. Raccoon hunters may use ATVs during nighttime raccoon take seasons only.

n. Caution: Many department-maintained roadways on WMAs are unimproved and substandard. A maximum 20 mph speed limit is recommended for all land vehicles using these roads.

10. Commercial Activities. Hunting Guides/Outfitters: No person or group may act as a hunting guide, outfitter or in any other capacity for which they are paid or promised to be paid directly or indirectly by any other individual or individuals for services rendered to any other person or persons hunting on any Wildlife Management Area, regardless of whether such payment is for guiding, outfitting, lodging or club memberships.

11. Wildlife Management Areas Basic Season Structure. For season dates, bag limits, shooting hours, special seasons and other information consult the annual regulations pamphlet for specific details.

12. Resident Small Game (squirrel, rabbit, quail, dove, woodcock, snipe, rail and gallinule). Consult regulations pamphlet.

13. Waterfowl (ducks, geese and coots). Consult regulations pamphlet.

14. Archery. Consult regulations pamphlet.

15. Hogs. Consult regulations pamphlet.

16. Outlaw Quadrupeds and Birds. Consult regulations pamphlet. During hunting seasons specified on WMAs, incidental take of outlaw quadrupeds and birds is allowed by properly licensed hunters and only with guns or bows and arrows legal for season in progress on WMA. However, crows, blackbirds, grackles and cowbirds may not be taken before September 1 or after January 2.

17. Wildlife Management Areas Hunting Schedule and Regulations

a. Acadiana Conservation Corridor

b. Alexander State Forest. Vehicles restricted to paved and graveled roads. No parking on or fishing or swimming from bridges. No open fires except in recreation areas.

c. Atchafalaya Delta. Water control structures are not to be tampered with or altered by anyone other than employees of the Department of Wildlife and Fisheries at any time. ATVs, ATCs and motorcycles prohibited.

d. Attakapas

e. Bayou Macon. All night activities prohibited except as otherwise provided. Mules are allowed for nighttime raccoon hunting.

f. Bayou Pierre

g. Bens Creek

h. Big Colewa Bayou. All nighttime activities prohibited.

i. Big Lake

j. Biloxi

k. Bodcau

l. Boeuf

m. Boise-Vernon

n. Buckhorn

o. Camp Beauregard. Daily military clearance required for all recreational users. Registration for use of Self Clearing Permit required once per year. All game harvested must be reported. Retriever training allowed on selected portions of the WMA. Contact the Region office for specific details.

p. Dewey W. Wills. Crawfish: 100 pounds per person per day.

q. Elm Hall. No ATVs allowed.

r. Floy McElroy

s. Fort Polk. Daily military clearance required to hunt or trap. Registration for use of Self Clearing Permit required once per year. Special regulations apply to ATV users.

t. Grassy Lake. Commercial Fishing: Permitted except on Smith Bay, Red River Bay and Grassy Lake proper on Saturday and Sunday and during waterfowl season. Permits available from area supervisor at Spring Bayou headquarters or Opelousas Region Office. No hunting in restricted area.

u. Jackson-Bienville. ATVs are allowed on non-public maintained gravel roads and timber management woods, roads and trails.

v. Joyce. Swamp Walk: Adhere to all WMA Rules and regulations. No firearms or hunting allowed within 100 yards of walkways. Check hunting schedule and use walkway at your own risk.

w. Lake Boeuf

x. Lake Ramsay. Foot traffic only Call vehicles restricted to Parish Roads.

y. Little River

z. Loggy Bayou

aa. Manchac. Crabs: No crab traps allowed. Attended lift nets are allowed.

bb. Maurepas Swamp

cc. Ouachita. Waterfowl Refuge: North of La. Hwy. 15 closed to all hunting, fishing and trapping during duck season including early teal season. Crawfish: 100 pounds per person per day limit. Night crawfishing prohibited. No traps or nets left overnight. Commercial Fishing: Closed. All nighttime activities prohibited except as otherwise provided.

dd. Pass-a-Loutre. Commercial Fishing: Same as outside. Commercial mullet fishing open only in: South Pass, Pass-a-Loutre, North Pass, Southeast Pass, Northeast Pass, Dennis Pass, Johnson Pass, Loomis Pass, Cadro Pass, Wright Pass, Viveats Pass, Cognevich Pass, Blind Bay, Redfish Bay, Garden Island Bay, Northshore Bay, East Bay (west of barrier islands) and oil and gas canals as described on the Department Pass-a-Loutre WMA map. ATVs, ATCs and motorcycles prohibited on this area. Oyster harvesting is prohibited.

ee. Pearl River. All roads closed 8 p.m. to 4:30 a.m. to all vehicles. Old Hwy. 11 will be closed when river gauge at Pearl River, Louisiana, reaches 16.5 feet. All hunting will be closed when the river stage at Pearl River reaches 16.5 feet except waterfowl hunting south of Hwy. 90. No hunting in the vicinity of Nature Trail. Observe "No Hunting" signs.

Rifle range open noon until 4 p.m. Friday, and 8 a.m. to 4:30 p.m. Saturday and Sunday with a fee.

ff. Peason Ridge. Daily military clearance required to hunt or trap. Registration for use of Self Clearing Permit required once per year. Special federal regulations apply to ATV users.

gg. Plum Creek (Formerly Georgia-Pacific). except as otherwise provided, all nighttime activities prohibited.

hh. Pointe-aux-Chenes. Hunting until 12 noon on ALL GAME, except for DOVE hunting and experimental youth deer hunt as specified in regulation pamphlet. Point Farm: Gate will be open during each Saturday of the second split of dove season and all weekends during month of February. No motorized vessels allowed in the drainage ditches. Recreational Fishing: Shrimp may be taken by the use of cast nets only. During the inside open shrimp season, 25 pounds per boat per day (heads on) shall be allowed. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) may be taken for bait. Oyster harvesting is prohibited. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none are to remain set overnight. Twelve dozen crabs are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the wildlife management area and shall be limited to 100 pounds per boat or group. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. Mudboats or vessels with engines larger than 25 h.p. prohibited in the Montegut and Grand Bayou marsh management units. Public is permitted to travel anytime through the WMA for access purposes only, in the waterways known as Grand Bayou, Humble Canal, Little Bayou Blue and Grand Bayou Blue. Vehicles prohibited on Point Farm properties unless authorized by the department. ATVs, ATCs and motorcycles prohibited on this area.

ii. Pomme de Terre. Commercial Fishing: permitted Monday through Friday, except closed during duck season. Commercial Fishing permits available from area supervisor, Opelousas Region Office or Spring Bayou headquarters. Sport Fishing: Same as outside except allowed after 2 p.m. only during waterfowl season. Crawfish: April 1 - July 31, recreational only, 100 lbs. per boat or group daily.

jj. Red River. Crawfishing prohibited on Wetland Restoration Areas.

kk. Russell Sage. Transporting trash or garbage on WMA roads is prohibited. All nighttime activities prohibited except as otherwise provided. Note: All season dates on Chauvin Tract (U.S. 165 North) same as outside, except still hunt only and except deer hunting restricted to archery only. Waterfowl hunting after 2 p.m. prohibited. All vehicles including ATVs prohibited.

ll. Sabine

mm. Sabine Island. Sabine Island boundaries are Sabine River on the west, Cut-Off Bayou on the north, and Old River and Big Bayou on the south and east.

nn. Salvador/Timken. Hunting until 12 noon only for all game. All nighttime activities prohibited, including frogging. Recreational Fishing: Shrimp may be taken by the use of cast nets only. During the inside open shrimp season,

25 pounds per boat per day (heads on) shall be permitted. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) may be taken for bait. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none of the lines are to remain set overnight. Twelve dozen crabs maximum are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the wildlife management area and shall be limited to 100 pounds per boat or group. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. Boats powered by internal combustion engines having horsepower ratings above 25 hp are permitted only in oil company access canals, Louisiana Cypress Canal, the Netherlands Pond including the West Canal, Lakes - "Baie Des Chactas" and Baie du Cabanage" and the Rathborne Access ditch. Operation of the above described internal combustion engines in interior ditches is prohibited except by experimental permit to be obtained from the New Orleans Office, Fur and Refuge Division, Room 217. Pulling boats over levees, dams or water control structures or any other activities which cause detriment to the integrity of levees, dams and water control structures is prohibited. Special Use Permits may be issued for persons interested in clearing existing ditches (trenasses). Permits will be considered on a case-by-case basis. Contact Pointe-aux-Chenes. ATVs, ATCs and motorcycles prohibited on this area.

oo. Sandy Hollow. Bird Dog Training: Consult regulation pamphlet. Wild birds only (use of pen-raised birds prohibited). Bird Dog Field Trials: Permit required from Baton Rouge Region Office. Horseback Riding: Organized trail rides prohibited. Horses and mules are specifically prohibited during turkey and gun season for deer except as allowed for bird dog field trials. No horses and mules on green planted areas. No motorized vehicles allowed off designated roads.

pp. Sherburne. Crawfishing: Recreational crawfishing only on the North and South Farm Complexes. Crawfish harvest limited to 100 pounds per vehicle or boat per day. No traps or nets left overnight. No motorized watercraft allowed on farm complex. Commercial crawfishing allowed on the remainder of the area. Permit is required. Retriever training allowed on selected portions of the WMA. Contact the Region office for specific details. Vehicular traffic prohibited on east Atchafalaya River levee within Sherburne WMA boundaries. Rifle and Pistol Range open daily. Skeet ranges open by appointment only, contact Hunter Education Office. No trespassing in restricted area behind ranges. Note: Atchafalaya National Wildlife Refuge, and U.S. Army Corps of Engineers land holdings adjacent to the Sherburne Wildlife Management Area will have the same Rules and regulations as Sherburne WMA. No hunting or trapping in restricted area.

qq. Sicily Island Hills. Firearms and any game harvested cannot be transported through the area except during the corresponding open season on area.

rr. Soda Lake. No motorized vehicles allowed. All trapping and hunting prohibited except archery hunting for deer.

ss. Spring Bayou. Commercial Fishing: permitted Monday through Friday except slat traps and hoop nets permitted any day. Permits available from area supervisor or Opelousas Region Office. Closed until after 2 p.m. during waterfowl season. Sport Fishing: Same as outside except allowed only after 2 p.m. during waterfowl season. Crawfish: recreational only. No hunting allowed in headquarters area. Only overnight campers allowed in the improved Boggy Bayou Camping area. Rules and regulations posted at camp site. A fee is assessed for use of this camp site. Water skiing allowed only in Old River and Grand Lac.

tt. Thistlethwaite. No hunting or trapping in restricted area (See WMA Map). All motorized vehicles restricted to improved roads only. All users must enter and leave through main gate only. No entry into restricted areas.

uu. Three Rivers

vv. Tunica Hills. All vehicles restricted to Parish roads. ATVs restricted to designated trails. Driving on food plots prohibited. Access to restricted areas is unauthorized. Refer to WMA map. Camping prohibited on area. North of Hwy. 66 (Angola Tract) closed to the general public March 1-September 30 except spring turkey hunting access allowed for those individuals drawn for special lottery hunt.

ww. Union. All nighttime activities prohibited except as otherwise provided.

xx. West Bay. Road Travel and Hunting Restrictions: All motorized vehicles restricted to designated roads. Refer to WMA map for location of designated roads. Hunting prohibited on roads designated for motorized vehicular travel.

yy. Wisner

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115 and R.S. 56:116.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:1279 (July 1999), amended LR 26:1494 (July 2000), LR 27:1049 (July 2001), LR 28:1603 (July 2002), LR 29:

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public hearings will be held at the following locations: Region 1C March 11, 7 p.m., Minden Civic Center, Minden, LA; Region 2C March 19, 7 p.m., Ruston Civic Center, Ruston, LA; Region 3C March 11, 7 p.m., Alexandria City Hall Convention Center, Alexandria, LA; Region 4C March 12, 7 p.m., Concordia Parish Community Center, Ferriday, LA; Region 5C March 13, 6 p.m., Burton Coliseum, Chalkley Room, Lake Charles, LA; Region 6C March 19, 7 p.m., National Marine Fisheries Building, Suite 119, Lafayette, LA; Region 7C March 10, 7 p.m., Pontchatoula High School Auditorium, Pontchatoula, LA. Also comments will be accepted at regularly scheduled Wildlife and Fisheries Commission Meetings from April through July. Interested persons may submit written comments relative to

the proposed Rule until Wednesday, May 7, 2003 to Mr. Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Terry D. Denmon
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: General and Wildlife Management Area
(WMA) Hunting**

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

This Rule amends permanent Rules and regulations for the state at large as well as Wildlife Management Areas. Establishment of hunting regulations is an annual process. The cost of implementing the proposed Rules, aside from staff time, is the production of the regulation pamphlet. Cost of printing the 2002-2003 state hunting pamphlet was \$14, 163 and no major increase in expenditures is anticipated. Local government units will not be impacted.

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

State hunting license fee collections are between 9.0 and 10.0 million dollars annually. Additionally, hunting and related activities generate approximately \$25.3 million in state sales tax, \$5.1 million in state income tax, and \$23 million in local sales tax revenues annually (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting season being established and a potential loss of some of these revenues.

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

Over 300,000 hunters and numerous businesses that provide goods and services to hunters are directly affected by this proposal. Hunting in Louisiana generates in excess of \$581,000,000 annually through the sale of outdoor related equipment, associated items and trip related expenditures (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting seasons being established and a potential loss of commerce revenues associated with these activities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Hunting in Louisiana provides 9,184 jobs (IAFWA; Southwick Associates, 2002). Not establishing hunting seasons might have a negative and direct impact on these jobs.

James L. Patton
Undersecretary
0303#091

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office