

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Office of Business Development Business Resources Division

Research and Development Tax Credit (LAC 13:I.Chapter 29)

The Department of Economic Development, Office of Business Development, pursuant to the authority of R.S. 47:6015 and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to adopt the following Rule for the Research and Development Tax Credit. The purpose of this Chapter is to implement the Research and Development Tax Credit Program as established by R.S. 47:6015 as enacted by Acts 2002, 1st Extra Session, No. 9. The tax credit is intended to encourage the development, growth, and expansion of the private sector within the state by encouraging new and continuing efforts to conduct research and development activities within this state. A person may earn a credit against income or corporation franchise tax liability for expenses qualifying for a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities and for amounts received as a federal Small Business Innovation Research (SBIR) Grant. The credit is equal to eight percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities; or twenty-five percent of the state's apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claims the alternative incremental tax credit under 26 U.S.C. §41; and eight percent of an amount awarded as an SBIR Grant.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 29. Research and Development Tax Credit

§2901. Purpose and Application

A. The purpose of this Chapter is to implement the Research and Development Tax Credit Program as established by R.S. 47:6015.

B. This Chapter shall be administered to achieve the following purposes:

1. encourage the development, growth, and expansion of the private sector within the state; and

2. encourage new and continuing efforts to conduct research and development activities within this state.

C. This Chapter shall apply to any Person claiming a credit; selling or otherwise transferring a credit; or purchasing or otherwise acquiring a credit under this program.

D. A person may earn a credit against income or corporation franchise tax liability for the following:

1. any person who claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for

increasing research activities may receive a credit in the amount of either;

a. eight percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities; or

b. twenty-five percent of the state's apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claims the alternative incremental tax credit under 26 U.S.C. §41; and

2. a person who receives a federal Small Business Innovation Research Grant as created by the Small Business Innovation Development Act of 1982 (P.L. 97- 219), reauthorized by the Small Business Research and Development Enhancement Act (P.L. 102-564), and reauthorized again by the Small Business Reauthorization Act of 2000 (P.L. 106-554), may receive a credit in an amount equal to eight percent of the award.

B. The credit may be carried forward for up to ten years, or under certain circumstances may be sold pursuant to the provisions of R.S. 47:6015 and this Chapter..

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2903. Definitions

A. Capitalized term not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2352 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Credit Certification? a certification by *DED* of the amount of the Research and Development Tax Credit earned by a *person* for a particular tax year.

DED? Louisiana Department of Economic Development.

Person? any natural *person* or legal entity including an individual, corporation, partnership, or limited liability company.

Qualified Research Expenses in the State? expenses that are Qualified research expenses under 26 U.S.C §41(b) and meet the following requirements:

a. wages described in 26 U.S.C. §41(b)(2)(A)(i) shall be paid to individuals who are residents of Louisiana and perform their services in Louisiana;

b. supplies described in 26 U.S.C. §41(b)(2)(A)(ii) shall be consumed in Louisiana;

c. expenses for the right to use computers as described in 26 U.S.C. §41(b)(2)(A)(iii) shall be for the use of computers located in Louisiana; and

d. contract research expenses as described in 26 U.S.C. §41(b)(3) shall be for services performed in Louisiana.

Research and Development Tax Credits? credits against Louisiana income or corporation franchise taxes that are

earned by a *person* pursuant to the provisions of the Research and Development Tax Credit Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2905. Certification of Amount of Credit

A. Prior to claiming a research and development tax credit on any tax return or selling any research and development tax credit, a person must apply for and obtain a Credit Certification from DED.

B. The application for a credit certification shall be submitted on a form provided by the DED and provide all information requested on the application. DED may request additional information if necessary.

C. DED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. the credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2907. Sale of Research and Development Tax Credits

A. Research and development tax credits may be transferred only by sale approved by DED. No sale or other transfer of a research and development tax credit shall be valid until the proposed sale or transfer is submitted to DED for approval and approved by DED.

B. A request for the approval of a sale or transfer shall be to the DED in writing and shall include the following information:

1. a copy of the proposed sale or transfer detailing all of its terms;
2. a reference to the original credit certification that authorized the research and development tax credit; and
3. copies of the taxpayer's last two LDOL Quarterly Report of Wages.

C. The taxpayer's business must be within one of the following clusters as described in Louisiana Vision 2020, 2003 Update:

1. advanced materials;
2. agriculture and food products;
3. entertainment;
4. environmental technologies;
5. food technologies;
6. health care;
7. information technologies;
8. life sciences (including biomedical and biotechnology);
9. micro- and nano technologies;
10. oil, gas and energy technologies;
11. chemicals/petrochemicals;
12. shipbuilding and other durable goods manufacturing;
13. transportation and logistics;
14. tourism;
15. wood, lumber, and paper.

D. DED shall review the proposed sale and if the sale complies with the criteria established by law, DED shall issue an approval certification. DED shall maintain a record of all credits sold and provide a copy of all approved sales to the Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2909. Application Fee

A.1. An Application Fee shall be submitted with the each application based on the following formula:

$$\text{APPLICATION FEE} = \text{TOTAL ESTIMATED TAX RELIEF} \times 0.2\% (.002)$$

$$\text{Total Estimated Tax Relief} = \text{Estimated four year expenditure} \times 15\% (.15)$$

$$\text{Application Fee} = \text{Total Estimated Tax Relief} \times .2\% (.002)$$

(Minimum fee is \$200 and the maximum fee is \$5,000 application per Program.

2. The Estimated four year expenditure is the total amount projected by the Taxpayer to be spent on Commercialization Costs over four tax years.

3. All fees shall be made payable to: Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2911. Recapture of Credits

A. An application for Credit Certification shall constitute:

1. a consent by the Taxpayer that Credits granted under this Section, but later disallowed in whole or in part, may be recovered by the secretary of the Department of Revenue from the taxpayer applicant through any collection remedy authorized by the provisions of R.S. 47:6015(H); and

2. a consent by the Taxpayer that the Department of Revenue may disclose to DED, any tax information of the Taxpayer related to the earning of, or use of Research and Development Tax Credits by the taxpayer or any other information required by DED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

Family Impact Statement

The proposed adoption of Rules for 13:I.Chapter 29 regarding the Research and Development Tax Credit 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 to Daryl Manning through the close of business on December 20, 2003, at P.O. Box 94185, Baton Rouge, LA 70804-9185; 1051 North Third Street, Baton Rouge, LA 70802; FAX (225) 342-9448; or email to manning@lded.state.la.us.

Don J. Hutchinson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Research and Development Tax Credit**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There will be no incremental cost or savings due to the implementation of this program. The staff that processes all LED programs will be sufficient to process and monitor this program.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be a decrease of General Fund collections of \$2,530,000 in FY 03/04, \$5,051,000 in FY 04/05, and \$7,591,000 in FY 05/06. There will be no impact on local sales tax collection.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no anticipated additional costs to persons or nongovernmental groups. There may be increase employment in the beneficiary business due to lower costs or increase in working capital.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition. There may be increased employment in the beneficiary business due to lower costs or increase in working capital.

Michael Williams
Director
0311#059

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Technology Commercialization Credit
(LAC 13:I:Chapter 27)

The Department of Economic Development, Office of Business Development, pursuant to the authority of R.S. 47:6015 and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to adopt the following Rules for the technology and commercialization credit. The purpose of this Chapter is to

implement the Technology and Commercialization Credit Program as established by R.S. 51:2351 et seq. as enacted by Acts 2002, 1st Extra Session, No. 8. The tax credit is intended to induce companies purchasing the rights to commercialize technology produced at a Louisiana university to locate and grow their businesses in Louisiana; to expand the economy of the state by enlarging its base of technology and research-based businesses; to enlarge the number of quality jobs available to an educated workforce to retain the presence of young people educated in Louisiana colleges and universities; and to attract and retain the finest research faculty to Louisiana universities. Businesses may earn tax credits for costs associated with commercializing technology resulting from research sponsored by Louisiana institutions. Eligible costs include investments in machinery and equipment and expenditures associated with obtaining the rights to use technology. The credit is 15 percent of eligible costs for at least four years and up to eight years.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 27. Technology Commercialization Credit

§2701. Purpose and Application

A. The purpose of this Chapter is to implement the Technology Commercialization Credit Program as established by R.S. 51:2351 et seq.

B. This Chapter shall be administered to achieve the following purposes:

1 to induce companies purchasing the rights to commercialize technology produced at a Louisiana university to locate and grow their businesses in Louisiana;

2 to expand the economy of the state by enlarging its base of technology and research-based businesses;

3 to enlarge the number of quality jobs available to an educated workforce to retain the presence of young people educated in Louisiana colleges and universities; and

4 to attract and retain the finest research faculty to Louisiana universities.

C. This Chapter shall apply to any person seeking to become qualified to claim a credit; claiming a credit; selling or otherwise transferring a credit; or purchasing or otherwise acquiring a credit under this program.

D. An individual or business may earn a credit on any income or corporation franchise tax liability equal to fifteen percent of the amount of money invested in commercialization costs of qualified technology. The credit may be carried forward for up to twenty years, or under certain circumstances may be sold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2351 and 2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2703. Definitions

A. Capitalized term not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2352 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise:

Commercialization? the development of a technology into a commercial product by going through the process of prototyping, securing funding, and other steps necessary to

get the final product to the marketplace. *Commercialization* begins after a technology has been reduced to practice and the company is proceeding to develop a commercial market.

Credit Certification? a certification by *DED* of the amount of the *technology commercialization credit* earned by a Taxpayer for a particular tax year.

DED? Louisiana Department of Economic Development.

Eligibility Certification? a certification by the *DED* that a taxpayer is eligible to earn *technology commercialization credits*.

Technology Commercialization Credits? credits against Louisiana income or corporation franchise taxes that are earned by a taxpayer pursuant to the provisions of the Technology Commercialization Credit Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2705. Determination of Eligibility to Earn Technology Commercialization Credits

A. Prior to earning any credits pursuant to the Technology Commercialization Credit Program, a taxpayer must apply for and obtain an eligibility certification from *DED* that the taxpayer is eligible to earn such credits.

B. The application for eligibility certification must be submitted prior to the end of the taxpayer's tax year for which the taxpayer first seeks to earn a technology commercialization credit.

C. A taxpayer shall apply for an eligibility certification by submitting an application on a form specified by the *DED* and provide at a minimum, the following information:

1. a description of the technology to be commercialized;

2. a description of how and from whom (what university) the technology was acquired including the terms of the acquisition;

3. if the technology is not owned by a university, in what manner research was sponsored by the university or what significant development or enhancement to the technology occurred at the university;

4. a pro forma statement of the company's planned investment to commercialize the technology showing at least \$250,000 in the first taxable year and \$2,000,000 by the end of the fourth taxable year;

5. any other information requested by *DED*.

E. *DED* shall review the application and, if *DED* determines that the taxpayer is eligible under the provisions of the Technology Commercialization Credit Program to earn technology commercialization credits, *DED* shall issue an eligibility certificate. *DED* shall maintain a record of all eligibility certificates issued and shall provide a copy of each certificate to the Louisiana Department of Revenue.

F. An eligibility certification shall be valid for a period of four tax years of the taxpayer.

G. An eligibility certification may be renewed for an additional four tax years on the following conditions:

1. the taxpayer has complied with all requirements of the program for the initial four tax years; and

2. an application for renewal is filed with *DED* not sooner than the end of the fourth tax and no later than the end of the fifth tax year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2707. Certification of Amount of Credit

A. Prior to claiming a technology commercialization credit on any tax return or selling any technology commercialization credit, a taxpayer must apply for and obtain a credit certification from *DED*. A taxpayer must have been issued an eligibility certification before a credit certification may be issued.

B. The application for a credit certification shall be submitted on a form provided by the *DED*. The application shall include a detailed itemization of all commercialization costs incurred during the tax year.

C. *DED* shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2709. Sale of Technology Commercialization Credits

A. Technology commercialization credits may be transferred only by sale approved by *DED*. No sale or other transfer of a technology commercialization credit shall be valid until the proposed sale or transfer is submitted to *DED* for approval and approved by *DED*.

B. A request for the approval of a sale or transfer shall be to the *DED* in writing and shall include the following information:

1. a copy of the proposed sale or transfer detailing all of its terms;

2. a reference to the original eligibility certification and credit certification that authorized the technology commercialization credit; and

3. copies of the taxpayer's last two LDOL Quarterly Report of Wages.

C. The taxpayer's business must be within one of the following clusters as described in Louisiana Vision 2020, 2003 Update:

1. advanced materials;
2. agriculture and food products;
3. entertainment;
4. environmental technologies;
5. food technologies;
6. health care;
7. information technologies;
8. life sciences (including biomedical and biotechnology);
9. micro- and nano technologies;
10. oil, gas and energy technologies;
11. chemicals/petrochemicals;
12. shipbuilding and other durable goods manufacturing;
13. transportation and logistics;
14. tourism;
15. wood, lumber, and paper.

D. DED shall review the proposed sale and if the sale complies with the criteria established by law, DED shall issue an approval certification. DED shall maintain a record of all credits sold and provide a copy of all approved sales to the Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2709. Application Fee

A.1. An application fee shall be submitted with the each application based on the following formula:

$$\text{APPLICATION FEE} = \text{TOTAL ESTIMATED TAX RELIEF} \times 0.2\% (.002)$$

$$\text{Total Estimated Tax Relief} = \text{Estimated four year expenditure} \times 15\% (.15)$$

$$\text{Application Fee} = \text{Total Estimated Tax Relief} \times .2\% (.002)$$

(Minimum fee is \$200 and the maximum fee is \$5,000 application per Program.)

2. the estimated four year expenditure is the total amount projected by the taxpayer to be spent on commercialization costs over four tax years.

3. All fees shall be made payable to: Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2711. Eligible Commercialization Costs

A. Investment in Machinery and Equipment shall include:

1. the purchase price, including any taxes and costs of delivery and installation, and any lease payments on a capitalized lease, less any sales taxes rebated under any tax incentive program, such as the enterprise zone or quality jobs programs;

2. the machinery and equipment must remain in use at the business location during the four tax years the taxpayer is eligible to earn the credit or its expected useful life, whichever is less. The sales price, trade in value, or other value received in the sale or disposition of the machinery or equipment shall be deducted from the commercialization costs for that year.

B. Other expenditures must be associated with obtaining the rights to use or the use of technology, and may include;

1. any transaction costs incurred in obtaining technology rights such as attorney fees for negotiation of licensing agreements, accounting, or other fees;

2. costs incurred for the use of technology such as royalties or licensing fees; and

3. costs incurred in protecting the rights to technology such as costs for filing or obtaining patents, recordation fees.

C. No expenditures for which a research and development tax credit was claimed pursuant to R.S. 47:6015 shall be eligible as a commercialization cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

§2713. Recapture of Credits

A. An application for eligibility certification or credit certification shall constitute:

1. a consent by the taxpayer that in the event the taxpayer must repay any technology commercialization credits or the sales price of any technology commercialization credits pursuant to the provisions of R.S. 51:2353(E)(1) or (E)(2):

a. the secretary of the Department of Revenue may recover any such amounts as authorized by R.S. 47:1561.2; and

b. such amounts will be deemed to constitute a rebate or refundable tax credit: and

2. a written agreement between the taxpayer and the secretary of the Department of Revenue for the suspension of the running of prescription for any technology commercialization credits claimed by the taxpayer or the sales proceeds of any technology commercialization credits until one year after the end of the fourth tax year of the eligibility certification.

3. a consent by the taxpayer that the Department of Revenue may disclose to DED, any tax information of the taxpayer related to the earning of, or use of technology commercialization credits by the taxpayer or any other information required by DED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:

Family Impact Statement

The proposed adoption of Rules for 13:I. Chapter 27 regarding the Technology and Commercialization Credit 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 December 20, 2003, at Post Office Box 94185, Baton Rouge, LA 70804-9185; 1051 North Third Street, Baton Rouge, LA 70802; FAX (225) 342-9448; or email to manning@lled.state.la.us.

Don J. Hutchinson
Secretary

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

RULE TITLE: Technology Commercialization Credit

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

There will be no incremental cost or savings due the implementation of this program. The staff that processes all LED programs will be sufficient to process and monitor this program.

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

There will be a decrease of General Fund collections of \$100,000 in FY 03/04, FY 04/05, and in FY 05/06.

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

There are no anticipated additional cost to persons or non-governmental groups. It is anticipated there will be an increase in receipts or income derived by Louisiana companies that apply for this program as a result of the benefit of lower taxes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition. There may be increase employment in the beneficiary business due to lower costs or increase in working capital.

Michael Williams
Director
0311#058

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? American Sign Language I and II as a Foreign Language (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The standard for foreign language has not changed; only the addition of American Sign Language I and II has been added to the list of courses. Students who are deaf and wish to apply for the TOPS scholarship program have to request a waiver for the foreign language requirement. With the approval of ASL I and II as a foreign language, this waiver will not be required. In addition, students who successfully complete these courses would not need a waiver when applying to universities that have foreign language entrance requirements.

**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 LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:

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Foreign Languages

2.105.07. The foreign language course offerings shall be as follows.

Course Title	Unit(s)	Refer to Bulletin
French I, II, III, IV, V	1 each	1876
German I, II, III, IV, V	1 each	1876
Italian I, II, III, IV, V	1 each	1876
Latin I, II, III, IV, V	1 each	1876
Russian I, II, III, IV, V	1 each	1876
Spanish I, II, III, IV, V	1 each	1876
American Sign Language I, II		

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Interested persons may submit comments until 4:30 p.m., January 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

RULE TITLE: Bulletin 741? Louisiana Handbook for School Administrators? American Sign Language I and II as a Foreign Language

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

The estimated implementation costs to state and local government units is the cost to print the advertisement in the register.

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

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

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

There are no costs and/or economic benefits to directly affected persons or non-governmental groups. American Sign Language I and II are courses, which would be taken by a student on a voluntary basis as one of the foreign language courses to be considered for Carnegie units for a high school diploma.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0311#090

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). At the September 2003 meeting of the State Board of Elementary and Secondary Education (SBESE), the board approved revisions to the "Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School System: Participation in LEAP 21." These guidelines are contained in *Bulletin 741? The Louisiana Handbook for School Administrators*. The proposed changes reflect the new achievement levels ("basic/approaching basic") for fourth grade students. This action was required to clarify the transfer policy as it relates to students transferring from nonpublic schools (both in-state and out-of-state and from home schooling programs).

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 LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:

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Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems Participation in the LEAP 21

A student who is transferring from an in-state nonpublic school or a home schooling program or a Louisiana resident* who is transferring from an out-of-state school to enroll in the Louisiana public school system at grades 5 or 9 shall be required to take the 4th- or 8th-grade LEAP 21 English Language Arts and Mathematics tests. Fourth-grade students must score *Basic* or above on either the LEAP 21 English Language Arts test or the LEAP 21 Mathematics test and *Approaching Basic* or above on the other one. Eighth-grade students must score *Approaching Basic* or above on both the English Language Arts and Mathematics tests. Beginning in spring 2006, the achievement level for 8th grade students will be raised to the *Basic/Approaching Basic* combination level. The following guidelines shall apply.

1. Students may take LEAP 21 during either a spring or a summer administration prior to enrollment. It is the responsibility of the parent(s) to contact the local school system, or Local Education Agency (LEA), District Test Coordinator to register for the test.

2. The nonpublic school and the parent(s) [or home schooling parent(s)] are responsible for providing to the LEA District Test Coordinator, at least 10 working days prior to the testing date, appropriate documentation required for requested standard testing accommodations.

3. Students with disabilities who have a current 1508 evaluation will participate in LEAP 21 testing. Promotion decisions for these students will adhere to the High Stakes Testing Policy.

4. LEAs may charge a fee for the testing of nonpublic and home schooling students. This fee shall be refunded upon the student's enrollment in that public school system the semester immediately following the testing.

5. Students who participate in a spring administration and fail to score at the required achievement level(s) are eligible to retake the LEAP 21 at the following summer administration.

6. LEAs shall offer LEAP 21 summer remediation to nonpublic/home schooling 4th- and 8th-grade students who fail to score at the required LEAP 21 achievement level(s), as well as to nonpublic/home schooling 4th- and 8th-grade students who did not test in the spring but wish to prepare for the summer administration. LEAs may charge a fee, not to exceed \$100 per student, for such remediation. The summer remediation fee shall be refunded upon the student's enrollment in that public school system the semester immediately following summer remediation.

7. Students who fail to score at the required achievement level(s) are not required to attend the summer remediation offered by the LEA to be eligible to take the summer retest. However, students must attend the LEA-offered summer remediation to be eligible for the appeal process or the policy override.

8. Only students who fail to score at the required achievement level(s) after participation in both the spring and summer administration of LEAP 21 and who attend the summer remediation offered by the LEA are eligible for the appeals process or the policy override, provided all criteria are met (see the High-Stakes Testing Policy).

9. Students who participate only in the spring administration or only in the summer administration and fail to score at the required achievement level(s) *are not eligible* for the appeals process or the policy override. These students *are not eligible* to take The Iowa Tests for placement purposes.

10. Students transferring into local school systems after the LEAP 21 summer retest but prior to February 15 are required to take the state-selected form of The Iowa Tests for grade placement if the students have not taken LEAP 21.

11. Students taking The Iowa Tests are not eligible for a retest or for the appeals process. These students may be eligible for the policy override based upon a decision by the School Building Level Committee.

12. The High Stakes Testing Policy and the local Pupil Progression Plan shall govern grade placement of students transferring to the local school systems.

*A Louisiana resident transferring from any out-of-state school is defined as a student who lives in Louisiana but attends school in an adjacent state.

* * *

Interested persons may submit comments until 4:30 p.m., January 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 741? Louisiana Handbook for
School Administrators? Guidelines for Nonpublic
and Home Schooling Students
Transferring to the Public School Systems**

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

There should be no additional implementation costs (savings) to state or local governmental units. The revision clarifies testing procedures for out-of-state students and for Louisiana residents transferring from any out-of-state school.

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

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

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

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

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

There should be no affect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0311#092

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 741? Louisiana Handbook for School
Administrators? Pre-GED/Skills Option Program
(LAC 28:I.901)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed revision is technical in nature to bring BESE policy into alignment with current accountability policy.

**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 LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:

* * *

Pre-GED/Skills Option Program

1.151.05. A school system shall implement the Pre-GED/Skills Option Program and shall obtain approval from the State Department of Education at least 60 days prior to the establishment of the program. (See High Stakes Testing Policy in Bulletin 1566.)

A program application describing the Pre-GED/Skills Option Program shall be submitted and shall address the following program requirements:

1. Students shall be 16 years of age or older and meet one or more of the following criteria:
 - *Shall have failed LEAP 21 English language arts and/or math 8th grade test for one or two years;
 - *Shall have failed English language arts, math, science and/or social studies portion of the GEE;
 - *Shall have participated in alternate assessment;
 - *Shall have earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, or not more than 15 Carnegie units by age 19;
 - *Students with Limited English Proficiency shall be considered eligible for the Pre-GED/Skills Option Program.
2. Enrollment is voluntary and requires parent/guardian consent.
3. Counseling is a required component of the program.
4. The program shall have both a Pre-GED/academic component and a skills/job training component. Traditional Carnegie credit course work may be offered but is not required. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses in developing the skills component.
5. BESE will require the Pre-GED/Skills Option Program to be on a separate site. Exceptions will be considered based on space availability, transportation or a unique issue.
6. Students who complete only the skills section will be given a Certificate of skills completion.
7. Students will count in the October 1st MFP count.
8. Students will be included in School Accountability. While enrolled, they shall be required to take the 9th grade Iowa Test or alternate assessment. All programs will be considered Option 1 for alternative education purposes, and the score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's SPS. (See Standard 20.002.00 of Bulletin 741.)

Refer to the Guidelines and Application Packet provided by the Louisiana Department of Education for the requirements to establish a Pre-GED/Skills Option Program.

* * *

Interested persons may submit comments until 4:30 p.m., January 9, 2004, to Nina Ford, State Board of Elementary

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

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 741? Louisiana Handbook for
School Administrators? Pre-GED/Skills Option Program**

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

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

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

There will be no effect on revenue collections by state/local governmental units.

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

There will be no estimated costs or economic benefits to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0311#091

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification
of School Personnel? Middle School PRAXIS Exams
(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 establishes content-specific Praxis exams as the certification requirement for middle school grades 4-8. This aligns the middle school certification testing requirement with the No Child Left Behind Act of 2001, which specifies that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches.

**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 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:

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Middle School Certification Testing Policy

For Louisiana middle school certified teachers to have "highly qualified" status, the state's middle school Praxis content exam certification requirements must conform with the No Child Left Behind Act of 2001. The Act specifies that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches.

The following exams are specified for use by teachers of grades 4-8 in seeking certification in a subject area:

Middle School Subject Area	Exam Number
Mathematics	0069
English/Language Arts	0049
Science	0439
School Social Studies	0089

* * *

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 comments until 4:30 p.m., January 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 746? Louisiana Standards
for State Certification of School Personnel
Middle School PRAXIS Exams**

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

This policy establishes content-specific Praxis exams as the certification requirement for middle school grades 4-8. This aligns the middle school certification testing requirement with the No Child Left Behind Act of 2001, which specifies that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

**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)**

The new middle school certification testing policy requiring content-specific exams will mean an additional testing cost for middle school teachers who become certified in more than one content area.

**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
0311#098

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for
State Certification of School Personnel
New Certification Structure Revisions
(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 aligns Bulletin 746 certification policy with the No Child Left Behind Act of 2001 by specifying grade levels for early childhood (PK-3), elementary (1-5), middle school (4-8), and secondary (6-12) certification in Louisiana. Additionally, it revises the middle school structure to delete the generic certification option and to require middle school certification in each of the core academic subject areas in which the individual will teach. This action aligns the certification structure with the

definition of middle school grades under the No Child Left Behind Act of 2001.

**Title 28
EDUCATION**

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

§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); LR 28:2505 (December 2002); LR 29:117 (February 2003); LR 29:119 (February 2003); LR 29:121 (February 2003), LR 30:

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New Certification Structure

A. Recommended Changes

1. Have the universities recommend that teachers be issued Level 1 Teaching Certificates when they have met state certification requirements and hold the universities 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.)

2. Change the certification structure to 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.

See B "New Certification Areas and Courses" for the areas of certification that are more content specific.

See C "Additional Certifications" for requirements to add additional areas of certification.

3. Require all new teachers to receive mentoring during their first year of the Louisiana Teacher Assistance and Assessment Program and have them undergo the assessment during the second year.

4. Require all teachers to pass the teacher assessment and teach for a total of three years before being issued a Level 2 teaching certificate.

5. Require all new teachers to undergo a predetermined amount of professional development during a five year time period in order to have their teaching certificates renewed for 5 years. Have the Blue Ribbon Commission on Teacher Quality develop the details for the professional development system during 2000-2001.

B. New Certification Areas And Courses

1. Common Elements of Basic Certification for All Grade Levels:

- a. General Education Coursework Same general coursework areas and hours (e.g., 54 hours) for Grades 1-5 and 4-8.
- b. Knowledge of the Learner and The Learning Environment Same general coursework areas and hours (e.g., 15 hours) for all PK-12 teachers.
- c. Teaching Methodology Varying requirements based upon focus areas.
- d. Student Teaching Same requirements and hours (e.g., 9 hours) for all PK-12 teachers.

2. Differing Elements of Basic Certification:

- a. Focus Areas Four new focus areas:
 - (1) Preschool to Grade 3 (Focus: Greater Depth in Early Childhood, Reading/Language Arts, and Mathematics)
 - (2) Grades 1-5 (Focus: Greater Depth in Reading/Language Arts and Mathematics)
 - (3) Grades 4-8 (Focus: Greater Depth in Content—Two In-depth Teaching Areas)
 - (4) Grades 6-12 (Focus: Greater Depth in Content—Primary Teaching Area and Secondary Teaching Area)

Primary Teaching Area: Pre-service teachers must complete at least 31 credit hours in a specific content area (e.g., English, Mathematics, etc.).

AND

Secondary Teaching Area: Pre-service teachers must complete at least 19 credit hours in a second content area (e.g., Science, Social Studies, etc.).

- b. Flexible University Hours Flexible hours that may be used by the universities to create quality teacher preparation programs.

3. Additional Certifications:

Additional grade level certifications within the undergraduate teacher education program that would require approximately 12-15 credit hours. Universities could create programs that would allow teachers to obtain more than one type of certification within the 124 total hours by using the "flexible hours" to add additional grade level or special education certifications.

- * If students do not possess basic technology skills, they should be provided coursework or opportunities to develop those skills early in their program.
- ** Students must spend a minimum of 270 clock hours in student teaching with at least 180 of such hours spent in actual teaching. A substantial portion of the 180 hours of actual student teaching shall be on an all-day basis.
- *** Three of the flexible hours must be in the humanities. This must occur to meet General Education Requirements for the Board of Regents.
- **** In addition to the student teaching experience, students should be provided actual teaching experience (in addition to observations) in classroom settings during their sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

Notes: Minimum credit hours have been listed. Programs may use the flexible hours to add more content hours to the various elements of the program.

The Board of Regents defines a "major" as being 25% of the total number of hours in a degree program; thus, 25% of 124 credit hours is 31 credit hours.

The Board of Regents defines a "minor" as being 15% of the total number of hours in a degree program; thus 15% of 124 credit hours is 19 credit hours.

No final grade below a "C" will be accepted by the State Department of Education in any coursework within the undergraduate program, with the exception of the general education requirements.

C. ADDITIONAL CERTIFICATIONS WITHIN THE UNDERGRADUATE PREPARATION PROGRAM

It is recommended that universities consider using their flexible hours to provide pre-service teachers opportunities to select additional areas to add to their certification—either special education or extended grade level certifications—when they obtain the baccalaureate degree. The additional hours would provide pre-service teachers with the necessary core knowledge to teach the additional content necessary for the new certification areas.

BASIC CERTIFICATIONS	ADD-ON CERTIFICATIONS		TOTAL HOURS
	NEW CERTIFICATIONS	ADDITIONAL COURSES AND HOURS	
GRADES PK - 3	GRADES 1-5	Content Emphasis: Sciences 6 Hours Social Studies 6 Hours Mathematics 3 Hours	15 Hours
GRADES 1-5	GRADES PK - 3	Content Emphasis: Nursery School and Kindergarten 12 Hours	12 Hours
GRADES 4-8	GRADES 1-5	Reading and Math Emphasis (Additional Content and Teaching Methodology): Accumulate a total of Reading 12 Hours Mathematics 21 Hours	Up to 15 Hours
GRADES 1-5, GRADES 4-8, OR GRADES 6-12	Mild/Moderate Special Education	Special Education Emphasis*: Methods and Materials for Mild/Moderate Exceptional Children, Assessment and Evaluation of Exceptional Learners, Behavioral Management of Mild/Moderate Exceptional Children, and Vocational and Transition Services for Students with Disabilities 12 Hours Practicum in Assessment and Evaluation of Mild/Moderate Exceptional Children (Note: This should not be required if students participate in student teaching that combines regular and special education teaching experiences.) 3 Hours * General knowledge of exceptional students and classroom organization should be addressed in the curriculum for all teachers under "Knowledge of Learner and the Learning Environment."	12 Hours (Additional 3 Hour Practicum if not Integrated Into Other Field-Based Experiences and Student Teaching)

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 comments until 4:30 p.m., January 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 746? Louisiana Standards for State Certification of School Personnel New Certification Structure Revisions**

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

This policy aligns Bulletin 746 certification policy with the No Child Left Behind Act of 2001 by specifying grade levels for early childhood (PK-3), elementary (1-5), middle school (4-8), and secondary (6-12) certification in Louisiana. Additionally, it revises the middle school structure to delete the generic certification option and to require middle school certification in each of the core academic subject areas in which the individual will teach. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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
0311#097

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for
State Certification of School Personnel
Revisions to Alternate Certification Programs
(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 alternate program descriptions to include content-specific PRAXIS exams as an entry requirement for middle school grades 48 candidates. This aligns the alternate program

requirements with the No Child Left Behind Act of 2001 specifying that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches. This policy also specifies the grade levels for early childhood, elementary, middle, and secondary certification in Louisiana, as revised to align with the No Child Left Behind Act of 2001.

Title 28

EDUCATION

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

Subchapter A. Bulletins and Regulations

§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, LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:

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Louisiana Alternate Certification Programs

Practitioner Teacher Program? Alternative Path to Certification

State-approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Practitioner Teacher Program. Practitioner Teacher Programs may offer certification in grades 1-5, grades 4-8, or grades 6-12 (regular or special education). The Practitioner Teacher Program is a streamlined certification path that combines intensive coursework and full-time teaching.

1. Admission to the Program. Program providers will work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring. To be admitted, individuals should:

a. possess a baccalaureate degree from a regionally accredited university;

b. have a 2.50 GPA on undergraduate work. Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider. However, in no case may the GPA be less than 2.20. (Note: State law requires that upon completion of the program, the teacher candidate has a 2.50 GPA for certification.);

c. pass the PRAXIS Pre-Professional Skills Test (e.g., reading, writing, and mathematics). (Individuals who already possess a graduate degree will be exempted from this requirement.);

d. pass the PRAXIS content specific examinations:

(1) candidates for grades 1-5 (regular and special education): pass the *Elementary Education: Content Knowledge* (#0014) specialty examination;

(2) candidates for grades 4-8 (regular and special education): pass the middle school PRAXIS examination(s) in the content area(s) in which they intend to teach;

(3) candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty

examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

(4) candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area;

e. meet other non-course requirements established by the college or university.

2. Teaching Preparation (Summer)

9 credit hours

(or equivalent 135 contact hours)

All teachers will participate in field-based experiences in school settings while completing the summer courses (or equivalent contact hours).

GRADES 1-5, 4-8, and 6-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships.

Mild/Moderate Special Education 1-12 practitioner teachers will successfully complete courses (or equivalent contact hours) that focus on special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities.

All-Level K-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child AND adolescent psychology, the diverse learner, classroom management and organization, assessment; instructional design, and instructional strategies across grade levels K-12 before starting their teaching internships.

3. Teaching Internship and First-Year Support

12 credit hours

(or equivalent 180 contact hours)

Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and will receive one-on-one supervision through an internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers provided by the Louisiana Teacher Assistance and Assessment Program (LaTAAP) and principals. NOTE: For all-level areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

4. Teaching Performance Review (End of First Year)

Program providers, principals, mentors, and practitioner teachers will form teams to review first-year teaching performance of practitioner teachers and determine the extent to which the practitioner teachers have demonstrated

teaching proficiency. If practitioner teachers demonstrated proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the assessment part of the Louisiana Teacher Assistance and Assessment Program.)

If weaknesses are cited, teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from one to nine credit hours (or 15 to 135 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, teams will determine whether practitioner teachers should participate in the new teacher assessment during the fall or whether the practitioner teachers should receive additional mentor support and be assessed after the fall.

5. Prescriptive Plan Implementation (Second Year)

1-9 credit hours

(15 to 135 contact hours)

Practitioner teachers who demonstrate areas of need will complete prescriptive plans.

6. Louisiana Assessment Program (Second Year)

Practitioner teachers will be assessed during the fall or later, depending upon their teaching proficiencies.

7. PRAXIS Review (Second Year)

Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS.

8. Certification Requirements

(Requirements must be met within a three-year time period. A practitioner teacher's license will not be renewed if all course requirements are not met with these three years.)

Private providers and colleges or universities will submit signed statements to the Louisiana Department of Education that indicate that the student completing the *Practitioner Teacher Program* alternative certification path met the following requirements:

A. passed the PPST components of the PRAXIS (Note: This test was required for admission.);

B. completed the Teaching Preparation and Teaching Internship segments of the program with an overall 2.50 or higher GPA;

C. passed the Louisiana Teacher Assistance and Assessment Program;

D. completed prescriptive plans (if weaknesses were demonstrated);

E. passed the specialty examination (PRAXIS) for the area(s) of certification. (Note: This test was required for admission.);

(1) grades 1-5 (regular and special education): Elementary Education: Content Knowledge Examination #0014;

(2) grades 4-8 (regular and special education): Middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

(3) grades 6-12 (regular and special education): PRAXIS *content specialty examination(s)* in the content area(s) in which they intend to teach. (Note: This

examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.);

(4) all-Level K-12 areas (art, dance, foreign language, health and physical education, and music): Content specialty examination in area(s) in which candidate intends to teach. (Note: This examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.) Provider must develop a process to assure that candidates for all-level certification demonstrate necessary performance skills in the area of certification;

F. passed the *pedagogy* examination (PRAXIS):

- a. grades PK-3: Early Childhood Education (#0020);
- b. grades 1-5: Principles of Learning and Teaching K-6;
- c. grades 4-8: Principles of Learning and Teaching 5-9;
- d. grades 6-12, all-level K-12 Certification: *Principles of Learning and Teaching 7-12*;
- e. mild/moderate special education 1-12: special education examinations.

9. Ongoing Support (Second and Third Year)

Program providers will provide support services to practitioner teachers during their second and third years of teaching. Types of support may include on-line support, Internet resources, special seminars, etc.

10. Professional License (Practitioner License to Level 2)

Practitioner teachers will be issued a practitioner license when they enter the program. They will be issued a level 1 professional license once they have successfully completed all requirements of the program; after three years of teaching, they will be eligible for a level 2 license.

Undergraduate/Graduate Courses and Graduate Programs

Universities may offer the courses at undergraduate or graduate levels. Efforts should be made to allow students to use graduate hours as electives if the students are pursuing a graduate degree.

Masters Degree Program Alternative Path to Certification

A Louisiana college or university with an approved teacher education program may choose to offer an alternative certification program that leads to a master's degree. The college or university may choose to offer the masters degree program as either a master of education or a master of arts in teaching. Masters Degree Programs may offer certification in grades PK-3, 1-5, 4-8, 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), 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 2.50 GPA, or higher, on undergraduate work;

3. pass the Pre-Professional Skills Test (e.g. reading, writing, and mathematics) on the PRAXIS (individuals who already possess a graduate degree will be exempted from this requirement);

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 examination;

b. candidates for grades 1-5 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;

c. candidates for grades 4-8 (regular and special education): pass middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

d. candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

e. candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.

5. Meet other non-course requirements established by the college or university.

Program Requirements

1. Knowledge of Learner and the Learning Environment

15 credit hours

Grades PK-3, 1-5, 4-8, and 6-12: Child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design and instructional strategies.

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-Level (grades K-12): Child AND adolescent psychology, the diverse learner, classroom management/organization, assessment, instructional design and instructional strategies, across grade levels K-12.

2. Methodology and Teaching 12-15 credit hours

Methods courses and field experiences. NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

3. Student Teaching or Internship 6-9 credit hours

Note: For all-level K-12 areas (art, dance, foreign

language, health and physical education, and music), experiences should be provided across grades K-12.

TOTAL: 33-39 credit hours

Certification Requirements

Colleges or universities will submit signed statements to the Louisiana Department of Education which indicate that the student completing the *Masters Degree Program* alternative certification path met the following requirements:

1. Passed PPST components of the PRAXIS. (Note: This test was required for admission.)
2. Completed coursework (undergraduate and masters program) with an overall 2.50 or higher GPA.
3. Passed the specialty examination (PRAXIS) for the area of certification. (Note: This test was required for admission.)
 - a. Grades PK-3 (regular and special education): *Elementary Education: Content Knowledge (#0014)* specialty examination.
 - b. Grades 1-5 (regular and special education): *Elementary Education: Content Knowledge (#0014)* specialty examination.
 - c. Grades 4-8 (regular and special education): Middle school PRAXIS content specialty examination in each area in which a candidate intends to teach.
 - d. Grades 6-12 (regular and special education) and all-level K-12 Certification: *Specialty content examination in areas to be certified*. (Note: This examination was required for admission.) If no examination was adopted for Louisiana in the certification area, for admission purposes, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area.
4. Passed the *pedagogy* examination (PRAXIS):
 - a. grades PK-3: Early Childhood Education (#0020);
 - b. grades 1-5: Principles of Learning and Teaching K-6;
 - d. grades 4-8: Principles of Learning and Teaching 5-9;
 - e. grades 6-12, all-level K-12 Certification: *Principles of Learning and Teaching 7-12*;
 - f. mild/moderate special education 1-12: special education examinations.

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

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, 1-5, 4-8, and 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), 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 2.20 GPA, or higher, on undergraduate coursework. [An overall 2.50 GPA is required for certification; those candidates with a GPA lower than 2.50 may have to take additional courses in the program to achieve a 2.50 GPA];
3. pass the PRAXIS Pre-Professional Skills Test (PPST) (Individuals who already possess a graduate degree will be exempted from this requirement.); 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 examination;
 - b. candidates for grades 1-5 (regular and special education): pass the elementary education: content knowledge (#0014) specialty examination;
 - c. candidates for grades 4-8 (regular and special education): pass the middle school PRAXIS *content specialty examination* in each area in which a candidate intends to teach;
 - d. candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.
 - e. candidates for all-level K-12 areas of art, dance; foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.

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*
12 hours
Grades PK-3, 1-5, 4-8, and 6-12: Child or 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 special education mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for Special Education Mild/Moderate exceptional children, vocational and transition services for students with disabilities.

All-level K-12 Areas: Child psychology and adolescent psychology; the diverse learner; classroom management/organization/environment; assessment; instructional design, and reading/instructional strategies across grade levels K-12.

*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. Note: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

3. Internship or Student Teaching 6 hours

Will include methodology seminars that are participant-oriented. Note: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), internship or student teaching experiences should be provided across grades K-12.

4. Prescriptive Plan 1-9 hours

The prescriptive plan can be pre-planned courses for individual programs or can be 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.) (Individuals who already possess a graduate degree will be exempted from this requirement).

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. (Note: This test was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.)

a. Grades PK-3: elementary education: content knowledge (#0014) specialty examination.

b. Grades 1-5: elementary education: content knowledge (#0014) specialty examination.

c. Grades 4-8: middle school content specialty examination in each area in which a candidate intends to teach.

d. Grades 6-12 and all-level K-12 certification: specialty content examination in areas to be certified.

4. Passed the pedagogy examination (PRAXIS):

a. grades PK-3: early childhood education (#0020);

b. grades 1-5: principles of learning and teaching k-6;

c. grades 4-8: principles of learning and teaching 5-9;

d. grades 6-12 and all-level k-12 certification: principles of learning and teaching 7-12;

e. mild/moderate special education 1-12: special education examinations.

Deadline Dates for Louisiana Alternate Programs

No students should be accepted into an old post-baccalaureate alternate certification program in the areas of PK-3, 1-5, 4-8, 6-12, and mild/moderate special education after Spring Semester 2003. Candidates in these areas who are already in the old alternative certification programs would be allowed until August 31, 2006, to complete their programs.

No students should be accepted into an old post-baccalaureate alternate certification program in the all-level (K-12) areas of art, dance, foreign language, H&PE, and music after Spring Semester 2004. Candidates in these areas who are already in the old alternative certification programs would be allowed until August 31, 2007, to complete their programs.

* * *

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 comments until 4:30 p.m., January 9, 2004, 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 746? Louisiana Standards for
State Certification of School Personnel
Revisions to Alternate Certification Programs**

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of
School Personnel? Temporary Employment Permit Policy
(LAC 28:I.903)

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

This policy revises the alternate program descriptions to include content-specific Praxis exams as an entry requirement for middle school grades 4-8 candidates. This aligns the alternate program requirements with the No Child Left Behind Act of 2001 specifying that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches. This policy also specifies the grade levels for early childhood, elementary, middle, and secondary certification in Louisiana, as revised to align with the No Child Left Behind Act of 2001. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

**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)**

The new middle school testing policy requiring content-specific exams will mean an additional testing cost for middle school teachers who become certified in more than one content area.

**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
0311#099

H. Gordon Monk
Staff Director
Legislative Fiscal Office

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 aligns Bulletin 746 certification policy for Temporary Employment Permits with R.S. 17.7(6)(c-ii)(d-e) in limiting the maximum number of times the certificate may be issued to three years. It also aligns policy with other Louisiana temporary licensure categories as to number of years (3) a teacher can remain employed on a temporary basis.

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), LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:

* * *

Types of Teaching Authorizations and Certifications

Non-Standard Temporary Authorizations to Teach			
		Conditions	Requirements To Renew Temporary Authorization To Teach And/Or Move To Another Certification Level
<p>Temporary Authority to Teach (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 Certification 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>	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. 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 renewability may be granted.)</p>	<p>District submits application to LDE; renewable annually for maximum of three years.</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>	<p>a. Individual holds a Louisiana teaching certificate, but is teaching outside of the certified area.</p>	<p>Teacher must obtain a prescription/outline of course work required for add-on certification in the area of the teaching assignment.</p> <p>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 for a period not to exceed three total years.</p> <p>Under condition (b) the Individual submits application to LDE; renewable annually for a period not to exceed three total years.</p>	<p>a. Individual meets all certification requirements, with the exception of passing all portions of the NTE examination, but scores within 10 percent of the composite score required for passage of all exams. (Formerly classified as EP)</p> <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. (Formerly classified as TEP)</p>	<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 annually, twice. One can remain on this temporary certificate for a period not to exceed three years. 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. While employed on an emergency teaching permit, employment period does not count toward tenure.</p> <p>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 a TEP. An individual can be re-issued a permit two times only if evidence is presented that the required test has been retaken within one year from the date the permit was last issued. One can remain on this temporary certificate for a period not to exceed three years.</p>

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.	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.
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**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
 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.

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.

Level 2 and 3 Certificates
 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.

* * *

Interested persons may submit comments until 4:30 p.m., January 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746? Louisiana Standards
for State Certification of School Personnel
Temporary Employment Permit Policy**

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

This policy aligns Bulletin 746 certification policy for Temporary Employment Permits with Louisiana R.S. 17.7(6)(c-ii)(d-e) in limiting the maximum number of times the certificate may be issued to three years. It also aligns policy with other Louisiana temporary licensure categories as to number of years (3) a teacher can remain employed on a temporary basis. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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 Langley
Deputy Superintendent
for Management and Finance
0311#093

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1566? Guidelines for Pupil Progression
High Stakes Testing Policy
(LAC 28:XXXIX.503, 505, 905, 911, 1301, and 1501)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 1566? Guidelines for Pupil Progression*. The State Board of Elementary and Secondary Education at its June, August, and September 2003 meetings made revisions to the High Stakes Testing Policy, which is an addendum to *Bulletin 1566? Guidelines for Pupil Progression*, and to Bulletin 1566 itself. The Rule changes include:

1. A revision in the student retention policy as contained in the High Stakes Testing Policy. As a result of the policy change, a student who has been retained in the fourth grade may only be promoted to the fifth grade. A

district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education. However, students who have been retained in the fourth grade who are 12 years old on or before September 30th may be promoted according to the local Pupil Progression Plan.

2. The adoption of the transitional program (4.5) waiver policy and criteria for a school system desiring to request a waiver of the above policy and offer a program in which certain students may be promoted from the transitional program to the sixth grade the following year.

3. The elimination of the LAA-B testing program (formally out-of-level testing) for students with disabilities.

4. A revision of the High Stakes Testing Policy as it relates to the passing standards for fourth grade students. Beginning in the spring of 2004, fourth graders will have to score "basic" on either the English language arts or mathematics component of LEAP 21 and "approaching basic" on the other to move to the fifth grade. The achievement levels for eighth graders will remain the same until 2006, when they too will have to achieve a score of "basic" on rather mathematics or English language arts and "approaching basic" on the other.

5. The appeals process as contained in the High Stakes Testing Policy was revised. At the fourth and eighth grade levels, school systems were mandated to review student eligibility and consider granting appeals. Prior to this revision, systems had the option of not considering an appeal on behalf of students who met certain criteria. The level at which a fourth grade student must score before an appeal can be considered was raised from 20 scaled score points from "approaching basic" to 20 scaled score points from "basic."

Title 28

EDUCATION

Part XXXIX. Bulletin 1566? Guidelines for Pupil Progression

Chapter 5. Placement Policies; State Requirements §503. Regular Placement¹

A. - A.1.b.

ii.(a). No fourth grade student shall be promoted until he or she has scored at or above the "basic" achievement level on the English language arts or mathematics components of the LEAP for the 21st century (LEAP 21) and at the "approaching basic" achievement level on the other (hereafter referred to as the "basic/approaching basic" combination).

(b). No eighth grade student shall be promoted until he or she has scored at or above the "approaching basic" achievement level on the English language arts and mathematics component of the LEAP for the 21st century (LEAP 21). Exceptions to this policy include the following.

(i). Policy Override. A given student scores at the "unsatisfactory" level in English language arts or mathematics and scores at the "mastery" or "advanced" level in the other; and participates in the summer school and retest offered by the LEA. The decision to override is made in accordance with the local Pupil Progression Plan, which may include referral to the School Building Level Committee (SBLC).

(ii). Retention Limit (Fourth Grade). The decision to retain a student in the fourth grade more than once as a result of failure to score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan.

[a]. A student who has repeated the fourth grade and who is 12 years old on or before September 30th may be promoted according to the local pupil progression plan.

[b]. Any other student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education. (See Appendix)

[c]. Students retained in the fourth grade shall retake all four components of the LEAP 21.

[d]. For promotional purposes, a student must score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of the LEAP 21 only one time.

(iii). Retention Limit (Eighth Grade). The decision to retain an eighth grade student more than once as a result of his/her failure to score at or above the "approaching basic" achievement level in English language arts and/or mathematics on LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following: An eighth grade student who has repeated the entire grade (Option 1) may be either retained again in the eighth grade; promoted to the ninth grade provided that the student has passed either the English language arts or mathematics component of LEAP 21, has attended at least one LEAP 21 summer remediation program and taken the summer retest, and will enroll in a remedial high school course (English or mathematics) in which an "unsatisfactory" achievement level was attained; or placed in a Pre-GED/Skills Program (Option 3). An eighth grade student attending class on a high school campus and earning some carnegie credit(s) (Option 2) may be either promoted or retained in accordance with the local pupil progression plan, or placed in a Pre-GED/Skills Program (Option 3).

[a]. If promoted without passing the failed component (English language arts or mathematics) on LEAP 21, the student must pass a high school remedial course in English language arts or mathematics before enrolling in or earning carnegie credit for English or mathematics.

[b]. (Pre-GED/Skills Program (Option 3) shall be available to students who meet criteria as outlined in Bulletin 741? Louisiana Handbook for School Administrators, standard 1.151.05.

(iv). Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP 21 Alternate Assessment (LAA). Students with disabilities who participate in the LEAP 21 Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

(v). Waiver for Limited English Proficient (LEP) Student. LEP Students shall participate in statewide assessment. The SBLC shall be granted the authority to

waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

(vi). Appeals Process. A school system, through its superintendent, must review student eligibility and consider granting an appeal on behalf of individual fourth and eighth grade students who have not scored at or above the required achievement levels on the English language arts and/or mathematics components of LEAP 21 after retesting provided that certain criteria are met. (Refer to Appendix B.)

(vii). - (viii). ...

iii. School systems shall design and implement additional instructional program options for these fourth and eighth grade students being retained

(a). The purpose of the additional instructional options is to move the students to grade level proficiency by providing focused instruction in the area(s) on which they failed to achieve the required level and by providing ongoing instruction using locally developed curricula based on state level content standards.

(b). Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes or other instructional options appropriate to the student's needs.

(c). LEAs are encouraged to design and implement additional options for students in grades 3, 4, 7 and 8 determined to be at risk of failing to achieve the required level on LEAP 21.

iv. Summer remediation programs and end-of-summer retests must be offered by school systems at no cost to students who did not take the Spring LEAP 21 tests or who failed to achieve the required level on LEAP 21.

(a). All students with disabilities who participate in LEAP 21 testing should receive services along with regular education students in summer programs, with special supports provided as needed.

(b). Students with disabilities who participate in LEAP 21 Alternate Assessment (LAA) are not eligible to attend LEAP 21 summer remediation programs.

v. School Systems must develop and implement non-discriminatory criteria to determine placement of eighth grade students who have not scored "approaching basic" or above on the LEAP 21 into Options 1 or 2.

(a). - (a).(ii). ...

(b). Option 2 Students. Students in Option 2 will participate in a transitional program on the high school campus. Students in Option 2 will retake the eighth grade components of the LEAP 21 previously failed (English and/or mathematics) and all parts of the Iowa Tests at the ninth grade level. For promotional purposes, a student must score at or above the "approaching basic" achievement level on the English language arts and mathematics components of LEAP 21 only one time. In order to be considered for placement into Option 2, a student must:

(i). pass at the "approaching basic" or above achievement level either the English language arts or mathematics component of LEAP 21; and

(ii). participate in both the summer remediation program offered by the LEA and the summer testing.

(c). All Option 2 Students who scored at the "unsatisfactory" achievement level on English language arts or mathematics component of the Grade 8 LEAP 21:

(i). shall take a remediation course in the component (English language arts and/or mathematics) of the Grade 8 LEAP 21 in which an "unsatisfactory" achievement level was attained;

(ii). may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the student passes a specially designed remediation elective and scores at or above the "basic" achievement level on the component of the eighth grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (p/f) on the students transcript;

(iii). may earn carnegie credit in other content areas;

vi. Exceptional students participating in LEAP 21 must be provided with significant accommodations as noted in the students IEP.

vii. The aforementioned policies will be in effect from spring 2004 through spring 2005. Beginning in spring 2006, the achievement level for eighth grade students will be raised to the "basic/approaching basic" combination level. The promotion policy will be reviewed in 2008.

viii. Other Requirements

(a). Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion. Refer to Appendix B for complete text of the High Stakes Testing Policy.

c. Other Requirements

i. Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion.

B. - D.1.a. ...

¹Schools can only make recommendations to parents regarding student enrollment in kindergarten, since kindergarten is not mandatory.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:

§505. Progression? Students Participating in LEAP 21 Alternate Assessment (LAA)

A. Students with disabilities who participate in the LEAP 21 alternate assessment (LAA) shall have promotion decisions determined by the School Building Level Committee.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 2000), amended LR 26:1433 (July 2000), LR 27:189 (February 2001), LR 29:123 (February 2003), LR 30:

Chapter 9. Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program

§905. Definition and Purpose

A. - B.2. ...

3. Beginning in the summer of 2004, remediation in the form of summer school shall be provided to fourth grade

students who score at the "approaching basic" or "unsatisfactory" level on LEAP 21st for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

4. Remediation in the form of summer school shall be provided to eighth grade students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

5. Remediation shall be provided to students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) science or social studies tests.

6. Remediation is recommended for students who score at the "approaching basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

7. Beyond the goal of student achievement in grade appropriate skills, additional goals are to give students a sense of success, to prevent alienation from school, and to prevent their early departure from school (R.S. 17:395 B).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 28:1189 (June 2002), LR 30:

§911. Criteria for State Approval

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

b. Beginning in the Summer of 2004, remediation in the form of summer school shall be provided to fourth grade students who score at the "approaching basic" or "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instructions per subject.

c. Remediation in the form of summer school shall be provided to eighth grade students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instructions per subject.

d. Remediation shall be provided to students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) Science and Social Studies tests.

e. Remediation is recommended for eighth grade students who score at the "approaching basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

C.3.f. - D.4. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999), amended LR 27:189 (February 2001), LR 30:

Chapter 13. Appendix B

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

A. Grade 4

1. A student may not be promoted to the fifth grade until he or she has scored at or above the "basic" achievement level on either the English language arts or mathematics component on the fourth grade leap for the

21st Century (LEAP 21) and at the "approaching basic" achievement level on other (hereafter referred to as the "basic/approaching basic" combination). For promotional purposes, however, a student shall score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 only one time

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grade 3 and grade 4 who have been determined to be at risk of failing to achieve the "basic/approaching basic" combination on the English language arts and mathematics components of the fourth grade LEAP 21, as well as for students who were retained in grade 4.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who failed to achieve the "basic/approaching basic" combination on the spring tests.

a. A student who failed to achieve the "basic/approaching basic" combination is not required to attend the LEA-offered LEAP 21 summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP 21 should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

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

d. LEAs shall offer remediation services to students who score at the "approaching basic" or "unsatisfactory" level on either the English language arts or mathematics components of the fourth grade LEAP 21.

4. In order to move students toward grade level performance, LEAs shall design and implement additional instructional program options for those fourth grade students being retained. The purpose of the additional instructional options is to move the students to grade level proficiency by providing focused instruction in the subject area(s) on which they failed to achieve the "basic/approaching basic" combination on LEAP 21, and ongoing instruction using locally-developed curricula based on state-level content standards for the core subject areas. Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes, or other instructional options appropriate to the students' needs. LEAs are also encouraged to design and implement additional instructional options for students in grades 3 and 4 who have been determined to be at risk of failing to achieve the "basic/approaching basic" combination on LEAP 21.

5. Retention Limit

a. The decision to retain a student in the fourth grade more than once as a result of his/her failure to achieve the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 shall be made by the LEA in accordance with the local pupil progression plan.

i. A student who has repeated the fourth grade and who is 12 years old on or before September 30th may be promoted according to the local pupil progression plan.

ii. Any other student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if its specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education.

iii. Students retained in the fourth grade shall retake all four components of LEAP 21.

6. For promotional purposes, however, a student shall score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 only one time.

6. Exceptions to the High Stakes Testing policy may include the following.

a. Policy Override

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

(a). the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

(b). the student has participated in both the spring and summer administrations of LEAP 21 and has attended the summer remediation program offered by the LEA (The student shall participate in the summer retest only on the subject area(s) that he/she scored at the "unsatisfactory" achievement level during the spring test administration); and

(c). parental consent is granted.

b. Students with Disabilities Eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessments (LAA)

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

(a). A student with a disability must participate in both the summer remediation program offered by the LEA and the summer retesting to be considered for a waiver.

c. Waiver for Limited English Proficient (LEP) Students

i. LEP students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

d. Appeals Process

i. A school system, through its superintendent must review student eligibility and consider granting an appeal on behalf of individual students provided that all of the following criteria have been met.

(a). The student's highest score in English language arts and/or mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) on which he/she scored "approaching basic" on LEAP 21.

(c). The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the "basic" achievement level in the subject for which the appeal is being considered.

e. Waiver for Extenuating Circumstances

i. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

(a). a physical illness or injury that is acute or catastrophic in nature;

(b). a chronic physical condition that is in an acute phase; or

(c). court ordered custody issues.

(i). Documentation

[a]. Physical Illness. Appropriate documentation must include verification that the student is under the medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

[b]. Custody Issues. Certified copies of the court ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

ii. Student Eligibility/Retest Requirements

(a). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(i). who are unable to participate in both the spring and the summer administration of LEAP 21, or who failed to achieve the "basic/approaching basic" combination on the spring administration of LEAP 21 mathematics and English language arts tests and are unable to participate in LEAP 21 summer retest, shall take the Iowa Tests for grade placement within 10 school days of returning to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction; must score at or above the cutoff score on the selected form of The Iowa Tests for grade placement to be promoted to the fifth grade; and are not eligible for a retest. These students may be eligible for the policy override or appeals process in accordance with the local pupil progression plan.

iii. Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(a). who are unable to participate in the spring testing and/or summer remediation including the provision of remediation through hospital/homebound instruction;

(b). are required to take the LEAP 21 summer retest. These students may be eligible for the policy override, or appeals process in accordance with the local pupil progression plan.

f. State-Granted Exceptions

i. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

(a). The Department of Education will provide a report to the State Board of Elementary and Secondary Education detailing state-granted waivers.

(i). Documentation

[a]. LEA Error. The LEA superintendent or parent must provide the State Superintendent of Education with school and student level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

[b]. Other Unique Situations. Documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted.

ii. Testing/Promotion Decisions

(a). The Department of Education will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

7. The promotion policies outlined above will be reviewed in 2008.

B. Grade Eight

1. A student may not be promoted to the ninth grade until he or she has scored at or above the "approaching basic" level on the English language arts and mathematics components of the eighth grade LEAP for the 21st Century (LEAP 21). For promotional purposes, however, a student shall score at or above the "approaching basic" level on the English language arts and mathematics components of LEAP 21 only one time.

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grade 7 and grade 8 who have been determined to be at risk of scoring at the "unsatisfactory" level in English language arts and/or mathematics on the eighth grade LEAP 21, as well as for students who were retained in grade 8.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who score at the "unsatisfactory" level on the spring tests.

a. A student who scores at the "unsatisfactory" achievement level is not required to attend the LEA-offered LEAP 21 summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP 21 testing should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

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

d. LEAs are encouraged to offer remediation services to students who score at the "approaching basic" level.

4. In order to move students toward grade level performance, LEAs shall design and implement additional instructional program options for those eighth grade students being retained. The purpose of the additional instructional options is to move the students to grade level proficiency by providing the following: focused instruction in the subject area(s) on which they scored at the "unsatisfactory" level on LEAP 21, and ongoing instruction using locally-developed curricula based on state-level content standards for the core subject areas. Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes, or other instructional options appropriate to the students' needs. LEAs are also encouraged to design and implement additional instructional options for students in grades 7 and 8 who have been determined to be at risk of scoring at the "unsatisfactory" level on the LEAP 21.

a. School systems shall develop non-discriminatory criteria for the placement of those eighth grade students who score at the "unsatisfactory" achievement level on the English language arts and/or the mathematics component(s) of the LEAP 21 in either Option 1 or Option 2.

i. Students in Option 1 will repeat grade 8. Students in Option 1 will retake all four components of LEAP 21.

ii. Students in Option 2 will participate in a transitional program on the high school campus. Students in Option 2 will retake the eighth grade components of LEAP 21 previously failed (English or mathematics) and all parts of the Iowa Tests at the ninth grade level.

iii. For promotional purposes, a student must score at or above the "approaching basic" achievement level on the English language arts and mathematics components of the LEAP 21 only one time.

b. In order to be considered for placement into Option 2, a student must:

i. pass at the "approaching basic" or above achievement level either the English language arts or mathematics component of LEAP 21; and

ii. participate in both the summer remediation program offered by the LEA and the summer testing.

5. In accordance with the local Pupil Progression Plan, Option 1 students who scored at the "unsatisfactory" achievement level on English language arts and/or mathematics component(s) of the Grade 8 LEAP 21:

a. may earn carnegie units in accordance with the policy regarding high school credit for elementary students as found in *Bulletin 741? Louisiana Handbook for School Administration*;

b. may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the "basic" achievement level on the

components of the eighth grade LEAP 21 that is retaken. The LEAP 21 shall be in lieu of a required credit examination. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (P/F) on the student's transcript;

6. All Option 2 students who scored at the "unsatisfactory" achievement level on English language arts or mathematics component of the Grade 8 LEAP 21:

a. shall take a remediation courses in the component (English language arts or mathematics) of the Grade 8 LEAP 21 in which an "unsatisfactory" achievement level was attained;

b. may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the "basic" achievement level on the component of the eighth grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (p/f) on the student's transcript;

c. may earn carnegie credit in other content areas.

7. Retention Limit

a. The decision to retain an eighth grade student more than once as a result of his/her failure to score at or above the "approaching basic" achievement level in English language arts and/or mathematics on LEAP 21 shall be made by the LEA in accordance with the local pupil progression plan which shall include the following:

i. An eighth grade student who has repeated the entire grade (Option 1) may be either retained again in the eighth grade; promoted to the ninth grade provided that the student has passed either the English language arts or mathematics component of LEAP 21, has attended at least one LEAP 21 summer remediation program and taken the summer retest, and will enroll in a remedial high school course (English or mathematics) in which an "unsatisfactory" achievement level was attained; or placed in a Pre-GED/Skills Program (Option 3).

ii. An eighth grade student attending class on a high school campus and earning some carnegie credit(s) (Option 2) may be either promoted or retained in accordance with the local pupil progression plan, or placed in a Pre-GED/Skills Program (Option 3).

(a). If promoted without passing the failed component (English language arts or mathematics) on LEAP 21, the student must pass a high school remedial course in English language arts or mathematics before enrolling in or earning carnegie credit for English or mathematics.

b. Pre-GED/Skills Program (Option 3) shall be available to students who meet criteria as outlined in *Bulletin 741? Louisiana Handbook for School Administrators*, standard 1.151.05.

8. Exceptions to the high stakes testing policy may include:

a. Policy Override

i. The local school system (LEA) may override the state policy for students scoring at the "unsatisfactory" level in English language arts or mathematics if the student scores at the "mastery" or "advanced" level in the other provided that

ii. the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

iii. the student has participated in both the spring and summer administrations of the LEAP 21 and has attended the summer remediation program offered by the LEA (The student shall participate in the summer retest only on the subject that he/she scored at the "unsatisfactory" achievement level during the spring test administration); and

iv. parental consent is granted.

b. Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessments (LAA)

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

c. Waiver for Limited English Proficient (LEP) Students

i. LEP students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for an LEP student. An LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

d. Appeals Process

i. A school system, through its superintendent, must review student eligibility and consider granting an appeal on behalf of individual students provided that all of the following criteria have been met.

(a). The student's highest score in English language arts and/or mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "approaching basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) on which he/she scored "unsatisfactory" on LEAP 21.

(c) The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the "approaching basic" achievement level in English language arts and/or mathematics.

e. Waiver for Extenuating Circumstances

i. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

(a). a physical illness or injury that is acute or catastrophic in nature;

(b). a chronic physical condition that is in an acute phase; or

(c). court ordered custody issues.

(i). Documentation

[a]. Physical Illness. Appropriate documentation must include verification that the student is

under the medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

[b]. Custody Issues. Certified copies of the court ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

ii. Student Eligibility/Retest Requirements

(a). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(i). who are unable to participate in both the spring and the summer administration of LEAP 21; or

(ii). who score at the "unsatisfactory" achievement level on the spring administration of LEAP 21 mathematics and/or English language arts tests and are unable to participate in LEAP 21 summer retest shall take the Iowa Tests for grade placement within 10 school days of returning to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction; must score at or above the cutoff score on the selected form of the Iowa Tests for grade placement to be promoted to the ninth grade; and are not eligible for a retest. These students may be eligible for the policy override or appeals in accordance with the local pupil progression plan;

(iii). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(iv). who are unable to participate in the spring testing and/or summer remediation including the provision of remediation through hospital/homebound instruction are required to take the LEAP 21 summer retest. These students may be eligible for the policy override or appeals process in accordance with the local pupil progression plan.

f. State-Granted Exceptions

i. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the state Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

(a). The Department of Education will provide a report to the State Board of Elementary and Secondary Education detailing state-granted waivers.

(i). Documentation

[a]. LEA Error. The LEA superintendent or parent must provide the State Superintendent of Education with school and student level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

[b]. Other Unique Situations. Documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted;

(ii). Testing/Promotion Decisions. The Department of Education will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

9. The promotion policies outlined above are in effect from Spring 2004 through Spring 2005; beginning in spring 2006 at the achievement level will be raised to the "basic/approaching basic" combination level. The promotion policies outlined above will be reviewed in 2008.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 28:1189 (June 2002), LR 29:123 (February 2003), LR 30:

Chapter 15. Appendix C

§1501. Waiver Request

A. Implementation of a Fourth Grade Transitional Program with a Sixth Grade Promotion Option Pupil Progression Plan Amendment

1. Section I

a. Purpose of a Transitional Program:

i. The State Board of Elementary and Secondary Education (SBESE) requires that school systems develop and implement additional instructional options for those students repeating the fourth grade. A transitional program is one such option. The purpose of a fourth grade transitional program is to provide a class setting to students who have demonstrated the ability to benefit from a combination of intensive fourth grade remedial work and fifth grade regular coursework. Students in the transitional program may be able to progress to the sixth grade the following year.

2. Section II

a. Minimum criteria for placement into a fourth grade transitional program:

i. the student must score at the "approaching basic" or above achievement on level either the English language arts or mathematics component of LEAP 21;

ii. the student must have met all requirements for promotion from the fourth grade as outlined in the local pupil progression plan; and

iii. the student must participate in both the summer remediation program offered by the LEA and the summer retest.

3. Section III

a. Minimum criteria for promotion to the sixth grade from a fourth grade transitional program:

i. the student must meet the required combination achievement level ("basic/approaching basic") on the English language arts and mathematics components of LEAP 21;

ii. the student must have met all requirements for promotion from the fifth grade as outlined in the local Pupil Progression Plan;

iii. the student must obtain a composite score of 1200 on all four components of the fourth grade LEAP 21;

iv. in order to move students toward the required combination achievement level ("basic/approaching basic")

on the English language arts and mathematics components of LEAP 21, the student must be provided remediation in the subject area(s) on which the student scored below "basic" on LEAP 21; and

v. in order for students to attain the required composite score (1200) on LEAP 21, focused instruction should be provided in the subject area(s) (Science and/or Social Studies) on which the student scored "unsatisfactory."

4. Section IV

a. Required Documentation

i. A school system requesting a waiver must submit data to the State Superintendent of Education that supports the effectiveness of their previously operated fourth grade transitional program. This data must include an analysis of sixth grade IOWA Tests scores that compare fourth grade students who repeated the entire grade, fourth grade students who repeated the grade in a transitional program (4.5 program), and fourth grade students who did not repeat any grades.

5. Section V

a. Assurances:

i. I assure that the fourth grade transitional program described in the amended 2003-2004 Pupil Progression Plan meets all of the requirements as outlined in Section III of this document.

ii. Based upon this submitted assurance, the _____ School System is requesting a waiver of the High Stakes Testing Policy to allow for the implementation of a fourth grade transitional program which meets the purpose as described in Section I with the option of promoting students to the sixth grade.

iii. Beginning with the 2004-2005 school year, school systems applying for this waiver must submit all required documentation as listed in Section IV and receive approval from the State Superintendent of Education prior to the implementation of a transitional (4.5) program that provides the option of promotion to the sixth grade. If approved, Sections I, II, and III must be included in the 2004-2005 Pupil Progression Plan.

iv. Signature of School System Superintendent: _____

v. Date: _____

6. Section VI

a. Approved/Denied: (circle one)

Cecil J. Picard

State Superintendent of Education

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Interested persons may submit comments until 4:30 p.m., January 9, 2004, 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 1566? Guidelines for Pupil
Progression? High Stakes Testing Policy**

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

There will be an additional implementation cost to state or local government. Because the passing score for LEAP 21 was raised, more students will probably need summer remediation. It is estimated that approximately 10 percent to 15 percent more students will need this remediation. Summer remediation was funded at \$185 per unit for Summer 2003. The exact cost as a result of this Rule change can not be determined at this time. We will need to wait for the 2004 test results to be released.

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

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

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

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

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

There may be an effect on employment within the local school districts due to the anticipated larger number of students attending summer school.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0311#095

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1922? Compliance Monitoring Procedures
(LAC 28:XCI.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 the adoption of *Bulletin 1922? Compliance Monitoring Procedures*. Bulletin 1922 will be printed in codified format as LAC 28:XCI of the Louisiana Administrative Code. The proposed Rule provides the procedures for monitoring all public and participating private schools and other educational agencies for compliance with *Bulletin 1706? The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A? Regulations for Students with Disabilities and Subpart B? Regulations for Gifted/Talented Students, and other applicable federal regulations, state statutes, and standards.

R.S. 17:1944(2) requires the Division of Special Populations to provide general supervision and monitoring and *Bulletin 1706? The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A? Regulations for Students with Disabilities and Subpart B? Regulations for Gifted/Talented Students require

that procedures for monitoring be established at Subsections 302 and 372.

**Title 28
EDUCATION**

**Part XCI. Bulletin 1922? Compliance
Monitoring Procedures**

Chapter 1. Overview

§101. Monitoring

A. Monitoring is a process to ensure a free, appropriate, public education for all children with exceptionalities and to assess and ensure program effectiveness for all children with exceptionalities in public schools. Students with disabilities, ages 3-21, as well as students identified as gifted and talented are included in this process.

B. The monitoring system for Louisiana, through the analysis of various quantitative and qualitative data, will focus State resources on improving educational program outcomes for students with exceptionalities through a comprehensive, data-based process. Annually, the State Department of Education (SDE) will select a list of specific variables and performance indicators for comparative purposes for all local educational agencies providing services to children with exceptionalities.

C. The quantitative data will be used to determine specific performance profiles for school systems using data relative to a set of variables. Performance profiles will be issued annually. The quantitative data will be collected in relation to a set of variables selected by a statewide group of stakeholders from various agencies and entities. This group will meet annually with the Division of Special Populations (DSP) to select only specific variables or "focus indicators" from all of the variables. The variables selected as "focus indicators" will be used to determine a system's performance status.

D. School systems will be placed in one of three performance categories within one of four population groups based on the total population of students attending public schools. Upon validation of quantitative data, school systems will be notified of their performance status. The performance categories are focus, exemplary, and continuous improvement.

1. School systems designated as *Focus* will receive an on-site compliance monitoring visit in order to review qualitative data specific to selected qualitative indicators that focus on the system's lowest performing indicator areas.

2. Systems designated as exemplary will receive recognition, and those systems which are exemplary on a statewide basis will also receive an on-site visit. The findings revealed in on-site visits that could be identified as best program practices will be available to other school systems.

3. The systems designated as continuous improvement will not be targeted to receive an on-site compliance visit. Through the LEA application process and self-review summaries, systems will, for that year, document and track improvement strategies. This documentation will include, not only the allocation of monies in the LEA grant application to target corrective action specific to noncompliance issues revealed in the system's self-review summaries, but also written documentation and tracking of other means of corrective action the school system has taken.

E. Annually, there will also be selected at random a group of systems which the DSP will visit for an on-site compliance review. The on-site review for the systems designated as random will include a review of a sampling of the qualitative indicators for all special education compliance areas. Eight will be chosen from the continuous improvement category.

F. Embodied in this process are proactive measures of self-evaluation, support, and technical assistance to ensure compliance with all regulatory requirements at the federal and state levels. Findings from data analysis, as well as findings from the on-site compliance visit, will be used to determine and allocate various resources for technical assistance and support to the school system by the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§103. Authority

A. The authority for monitoring is found in the following regulatory documents.

B. Individuals with Disabilities Education Act (IDEA), 20 USC, Chapter 33.

C. Federal Regulations for the Implementation of IDEA, 34 CFR Part 300, 301, and 303.

D. U.S. Education Department General Administrative Regulations (EDGAR).

E. Education of Children With Exceptionalities Act, R.S. 17:1941 et seq.

F. Regulations for Implementation of the Children with Exceptionalities Act, R.S.17:1941, et. seq., Bulletin 1706: Part A, Regulations for Students with Disabilities and Part B, Regulations for Gifted and Talented Students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§105. Local Educational Agencies (LEAs)

A. Local Educational Agencies (LEAs) to be monitored are:

1. city or parish school systems;
2. special school district;
3. state board of elementary and secondary special schools;
4. type 2 charter schools with special education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§107. Corrective Action and Sanctions

A. The Division of Special Populations has the responsibility to monitor all public educational agencies with programs for exceptional children within the state for compliance with applicable state and federal laws, regulations, and standards.

B. The Division of Special Populations is authorized to take actions necessary to ensure compliance. Failure on the part of a participating agency to comply may result in the SDE recommending to its governing authority a withholding of funds for the said agency. The affected agency shall be granted an opportunity for a hearing before final actions are taken.

C. Each system monitored and found to have non-compliant findings will be required to develop a corrective action improvement plan in collaboration with the Division of Special Populations. The meeting will be arranged within 30 days of receipt of the report. Based on a one-year timeframe, the plan will address the activities the system will implement to correct the areas of non-compliance identified in the on-site visit. If the corrective action activities extend beyond a one-year timeframe for completion, a plan may be submitted with extended timelines. This plan must still contain annual activities and growth targets which will be submitted on an annual basis to the DSP.

D. The progress toward completing the activities in the plan will be tracked by the DSP to determine if the timelines are being met. Systems will submit evidence and data as requested by the DSP to show completion of activities and evidence of change in the system as a result of the corrective action improvement plan. The DSP will conduct a follow-up, on-site visit to determine if the system has made systemic changes to correct non-compliant issues addressed in the corrective action improvement plan.

E. A written report of the findings from the follow-up visit will be issued to the system by the DSP with 30 days after the on-site visit. When the corrective action follow-up report for a system indicates that the system has remaining non-compliant findings, and there is not sufficient documented evidence provided within the mandated timeframe, the system will receive a letter directing the system to submit additional information within thirty business days to prove the deficiencies have been corrected and to inform the system of the possibility of sanctions if the issues are not corrected.

F. At the end of the 30 days in Subsection E above, if the system has not produced sufficient data to indicate that compliance has been met, the DSP shall initiate and implement a process which imposes further corrective action and sanctions on the system. The DSP will meet with the system to discuss the sanctions that will be issued.

G. Sanctions are implemented on a continuum. A larger number would reflect a more serious consequence.

1. The evidence submitted to and reviewed by the DSP to document that the non-compliant findings were:

- a. addressed and corrected, with documentation to show evidence of change; or
- b. addressed in a plan, which provides evidence for implementing effective corrective action, the system should submit evidence of change by a specified date.

2. The system shall contact the DSP to arrange for a meeting to redesign the Corrective Action Plan (CAP) to more effectively address the non-compliant findings from the previous school year's on-site visit. All CAPs must be written in a collaborative effort between the DSP and the school system. The system should identify and appoint a team to develop the corrective action improvement plan. It may be necessary to include general educators in the improvement planning process. The DSP staff responsible for compliance monitoring will determine from the findings, the additional DSP staff members that need to be in attendance. An approved CAP must include the signatures of the state and local superintendents.

3. The DSP will require that an intensive improvement plan for technical assistance be developed by the system to address non-compliant findings. The plan must be submitted to and approved by the local school board. The plan will be published in order to provide the public with information relative to the non-compliant finding, and the plan the system will use to correct the non-compliant findings. (Local newspapers and websites are methods that may be used for publishing the information.) Local funds will be used to implement the improvement plan.

4. The system will target IDEA Part B flow-through funds to address the identified non-compliant findings. The use of these Part B funds will be tracked by the system to show evidence to the DSP of the specific funds targeted for areas of non-compliance. The system will be required to provide clear and concise evidence of the use of the specific funds to target the deficiencies identified in the improvement plan. The DSP will monitor the expenditure of such funds on a consistent basis.

5. The DSP will require the appointment of a special master, monitor, or management team to oversee the corrective action improvement plan. The appointment is to be made by the state agency and funded at the local level.

6. IDEA Part B flow-through funds will be released on a conditional basis. The conditions will be written into the correction improvement plan with input by the DSP. The conditions will be implemented with the signature of the state superintendent and approval of the State Board of Elementary and Secondary Education (SBESE).

7. IDEA Part B flow-through monies, which could include the partial release of funds, will be withheld with the approval of the SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§109. Components of the Continuous Improvement Monitoring Process

A. The monitoring system will be implemented as a process that includes various components. This process will be comprehensive and continuous to include the use of various data sources. The monitoring system will be an ongoing process through the use of different components, rather than a cyclical process occurring on a scheduled basis.

B. The monitoring system will incorporate and utilize strategies and components as listed below:

1. analyze self-review summaries at the local level which are integrated to review the appraisal process as it relates to the development and implementation of programming, as well as review programming issues;

2. analyze data elements and databases that are current and captured by the DSP, which are directly related to student outcome;

3. analyze the LEA grant application to track and monitor the allocation and use of Part B funds to address priorities revealed through previous data sources in the monitoring process, as well as policy and procedural assurances;

4. review complaint management logs regarding specific complaints in individual systems;

5. analyze Extended School Year Program data;

6. analyze Annual School Report data;

7. analyze district and school accountability profiles;

8. analyze Louisiana's Automated System of Special Education Records (LANSER);

9. analyze FAPE tables and other mandated Federal data reporting (i.e., personnel tables, child count data);

10. review ongoing fiscal monitoring of the use of Part B funds through on-site visits and project completion reports;

11. review preschool on-site visits and data collection analysis and reporting;

12. analyze pupil progression assurances/reviews;

13. review the comprehensive system of personnel development/staff development plan, trainings conducted, and evaluations;

14. track corrective action on noncompliant issues and validate previous corrective action reviews, documentation, and on-site reviews;

15. analyze the provision of technical assistance to facilitate corrective action and to support the continuation of best program practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§111. Purpose

A. The SDE has the responsibility to ensure that each participating agency in the state is in compliance with all applicable federal and state laws, regulations and standards required for the provision of a free and appropriate public education for all exceptional children for whom each is legally responsible. To fulfill this responsibility, the SDE has established a purpose for conducting monitoring, as well as procedures and strategies that provide ongoing monitoring activities. The procedures provide continuous and comprehensive monitoring of all aspects of special education including the following:

1. child identification;

2. demographic and disproportionality issues;

3. screening, intervention, referral, and evaluation process;

4. program, services, and placement implementation for students with disabilities three through twenty-one years of age;

5. program, services, and placement implementation for gifted/talented students;

7. professional development; and

8. fiscal requirements relative to programmatic issues of local educational agencies.

B. In Louisiana, the purpose of compliance monitoring is threefold:

1. to ensure program effectiveness;

2. to enforce legal requirements and measure results of corrective action; and

3. to identify, promote, and support best program practices.

C. The information obtained as a result of the monitoring process will be utilized in the following ways:

1. to improve outcomes for all children with exceptionalities;

2. to direct initiatives statewide; and

3. to direct statewide personnel development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

Chapter 3. Operational Procedures for Compliance Monitoring

§301. Focus Monitoring

A. All systems are placed in performance profile categories on an annual basis. The performance profile is based upon an analysis of quantitative data collected by the SDE.

B. Monitoring will focus on the variables selected annually as focus indicators. Systems will be profiled on the focus indicators in defined population groups. On-site visits will be determined based on performance profiles rather than on cyclical scheduled on-site visits. Systems designated as focus and statewide exemplary will be subject to on-site compliance visits.

C. A group of school systems will be selected at *Random* for on-site compliance visits. A sampling of the qualitative indicators from each area will be reviewed in these systems.

D. Systems not noted as focus, exemplary, or random will be classified as continuous improvement. These will not be subject to on-site visits. The identification of non-compliant issues and corrective action necessary to remedy these issues will be tracked by the DSP through the validation of the self-review process in these systems.

E. If critical issues of noncompliance are identified by means other than the performance profiles, an on-site compliance visit may be required by the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§303. Timelines

A. Before the start of each monitoring cycle, each system will be issued a performance profile and a designation into which category the system fell. Within two weeks after the designations are made, a schedule of on-site visits will be issued to systems designated as focus, exemplary, and random.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§305. On-Site Visits

A. On-site visits will be conducted by teams of qualified individuals with training and experience in the program areas that they will be monitoring.

B. Individuals selected to serve as team members will be initially required to receive a minimum of sixteen hours of professional development specific to conducting on-site monitoring, conducted by the DSP, with follow-up training on an annual basis. In addition, team leaders will be initially be required to receive 32 of professional development specific to leadership, investigative techniques for specific regulatory areas, and assimilating data for report writing conducted by the DSP, with follow-up training annually and throughout the year as determined by the state monitoring coordinator. Participants will receive a certificate that indicates their completion of the required annual professional development activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§307. Regulatory Issues Reviewed On-Site

A. For Focus category systems, the regulatory issues and qualitative indicators reviewed will be specific to the variables targeted in the system's performance profile. These visits will focus on selected issues.

B. For random category systems, the on-site team will review a sampling of qualitative indicators from each of the variables on the performance profile.

C. For exemplary category systems, the on-site visit will be conducted for three purposes:

1. to validate the quantitative data using qualitative indicators specific to the regulatory issues for which the system has been found to be exemplary;

2. to issue commendations to the system; and

3. to collect data to be used in statewide dissemination efforts regarding effective program practices.

D. All qualitative indicators used in the on-site reviews will be appropriately addressed during the visits with personnel in the service setting, administrators, and parents.

E. The DSP will reserve the right to direct the team leader to review any and all regulatory issues that indicate non-compliance status in a school system.

F. Data for the following major regulatory issues will be analyzed, reviewed, and utilized in the self-review and on-site monitoring process:

1. child identification;

2. individual evaluation;

3. IEP development;

4. provision of a free, appropriate, public education;

5. participation in statewide assessment;

6. transition at different programming levels;

7. placement in the least restrictive environment;

8. professional development and personnel standards;

9. program comparability (ASR);;

10. facility accessibility and comparability;

11. procedural safeguards;

12. extended school year programming;

13. discipline procedures; and

14. gifted and talented services and programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§309. Activities Conducted Prior to the On-Site Visit

A. The on-site team leader must review and analyze the quantitative data collected by the DSP specific to the school system prior to the on-site visit and will include the following:

1. self-review data submitted by the school system;

2. performance profiles;

3. LEA Application for IDEA Part B funds;

4. complaint logs and due process hearings relative to the system;

5. files/logs indicative of technical assistance provided to the system by the DSP;

6. annual school report data;

7. information relative to the state's accountability system which is school-site specific;

8. school improvement plans;

9. data relative to statewide assessment for participation and performance;

10. data derived from the District Composite Reports;

11. information relative to certifications and professional development activities provided to personnel and parents; and

12. any other data the team leader determines is necessary to review as part of a comprehensive data review of the school system.

B. The team leader will contact the LEA supervisor/director of special education and any member of the DSP or SDE staff for clarification of any concerns regarding the data. Upon completion of the data analysis, the team leader will select the sites to be visited, the number and types of records to be reviewed, and the methods that will be used for validation of qualitative issues during on-site visits.

C. The team leader will provide the DSP with the names of the sites, the number of records to be reviewed, the methods that will be used for validation, and the number and types of team members needed for conducting the on-site visits. The DSP will select team members based on the needs expressed by the team leader. The LEA Supervisor/Director of Special Education will be notified not less than two days prior to the on-site visit on this information.

D. The team leader will meet with the selected team members to:

1. summarize, analyze, and review the school system's data;

2. review the specific qualitative indicators relative to the focus indicators that will be targeted in the on-site monitoring visit;

3. discuss any unique circumstances or issues regarding the on-site visit to the system;

4. answer any questions or concerns of the team members;

5. discuss, review, and instruct the team on the various methods to be used in validating the qualitative data during the on-site visits; and

6. make team member assignments for specific site visits and record reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§311. Activities Conducted During the On-Site Visit

A. The team leader and team members will meet briefly with the representatives of the LEA to discuss how the visit will be conducted and to discuss any logistical or travel issues of concern.

B. The parent team member will conduct a parent focus meeting and interview parents to collect data/information on their satisfaction of the services provided to their children and their involvement in their children's program.

C. Team members will visit sites, make observations, review records, and interview personnel. Student input will be collected through a student focus group or interviews. The team leader will be available to team members throughout the visit to provide additional information, if required, as well as to assist the team members with their tasks.

D. The team leader will meet with the director to review administrative issues. Additional data/information may be requested if further analysis is required for determining compliance status for specific regulatory issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§313. Activities/Procedures at the Completion of the On-Site Visit

A. The team leader will meet with the team members to discuss, review, and analyze the team findings and to summarize their findings on DSP issued forms. The team leader will meet with representatives of the school system providing services for an exit interview.

B. The team leader will compile and mail a copy of a preliminary draft of a Summary of Findings to the DSP no later than 10 business days after the completion of the on-site visit. The team leader may request a meeting to discuss the findings with the DSP.

C. The DSP will review the draft, issue final approval of the report, and mail the Summary of Findings to the school system no later than 60 business days after the completion of the on-site monitoring visit.

D. Upon receipt of the report, the school system or agency will have 30 business days from the date of receipt of the report to review, accept, or reject the findings, and to arrange for a meeting with the DSP to develop a plan of corrective action to address deficiencies determined in the Summary.

E. If the school system does not accept the findings, there will be a period of 30 business days allowed for negotiations of the findings and the corrective action. Extensions for negotiations may be granted by the DSP, upon written request.

F. If negotiations fail and an agreement is not reached within the established timelines, the state director of special education shall, within five business days, notify the state superintendent of education.

G. The State Superintendent shall notify the State Board of Elementary and Secondary Education (SBESE) at its next meeting of a system's noncompliant status. All procedures and sanctions regarding non-compliance shall be followed according to federal and state regulations.

H. The school system in collaboration with the DSP, will be required to design corrective action which defines specific supports and resources that the system must have in order to implement the corrective action plan.

I. Timelines must be developed that are specific to the corrective action required and to the issue found to be in non-compliant status. The system must provide appropriate signatures required in the report and return the report to the DSP.

J. The DSP will allocate resources from the State level, both human and monetary, when determined necessary by the DSP and the system in question, on an annual basis to address the issues specific to implementing the corrective action required in school systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§315. Validation of Corrective Action

A. Upon receipt of the approved compliance document, the school system must begin to address the corrective action plan agreed upon by the school system and the DSP.

B. Corrective action timelines established in the report will be tracked to determine corrective action has been taken and to verify compliance by the DSP.

C. All corrective action must be completed in accordance with the timelines that relate to each specific non-compliant issue. Documentation must be submitted to the DSP within the required timelines.

D. The DSP will conduct an on-site visit in the year following the initial on-site visit, or sooner if deemed necessary by the DSP, to validate the documentation of the implementation of the corrective action.

E. The DSP will notify the school system or agency in writing when all corrective action has been accepted as completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§317. Self-Review Conducted at the Local Level

A. A locally conducted self-review will be an integral component of the entire monitoring process. The data collected in the self-review will be analyzed to help the LEA and the DSP identify areas of non-compliance, as well as levels of support and technical assistance needed at the local level. Corrective action timelines established in the report will be reviewed in order to determine the system's effort and commitment to making valid systematic findings and developing corrective action that will result in the required evidence of change.

B. Local school systems will use set procedures for conducting self-reviews of compliance standards.

1. Systems will identify the sites to be included in the self-review. Systems should use the procedures identified in their LEA application to identify the number of sites.

2. The identified sites must provide a cross section of all exceptionalities served, as well as a sample of each service delivery model used in the system.

3. A minimum of five percent of the records of children with exceptionalities must be reviewed, along with the use of other methods and strategies for determining compliance status.

4. The local monitoring team and team leader will be designated at the local level.

5. The team must include personnel from the service setting such as general educators, parents, and administrators.

6. The team will be trained at the local level on procedures and strategies for conducting a self-review relative to special education regulatory compliance standards.

7. All self-review activities will be coordinated by the local school system or agency.

8. The school system or agency will be required to monitor the same regulatory issues for State and Federal regulations as monitored by the DSP.

9. As part of the self-review, the team will gather information from families of students receiving special education services regarding their satisfaction with their children's program and services, and their involvement in

their children's program. This information may be gathered through focus meetings, interviews, or surveys.

10. The school system providing services will summarize the findings and compile a report to include:

a. summary of non-compliant issues;

b. a corrective action plan for correcting deficiencies and a timeline for completing a corrective action; and

c. identified best practices.

11. The report of findings will be submitted as part of the annual LEA Application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

Chapter 5. Fiscal Monitoring

§501. Introduction

A. There are three distinct types of fiscal monitoring performed by the State Department of Education, Division of Education Finance, pertaining to Special Education Programs:

1. on-site fiscal reviews of sub recipients;

2. verification of compliance applicable laws and regulations for non-supplanting, maintenance of effort, excess cost and other financial information during the award period; and

3. verification of the accuracy of the child count.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§503. On-Site Fiscal Reviews of Subrecipients

A. There are two main purposes that on-site fiscal reviews accomplish. The first purpose is to verify the completeness, accuracy, and validity of reimbursements of program funds received by sub-recipients (local educational agencies, state agencies, or universities.) The other purpose is to ensure that these reimbursements of program funds were made in accordance with applicable federal and state laws, regulations and guidelines.

B. Subrecipients are selected for on-site fiscal reviews on a cyclical basis. There are also requests by Division of Special Populations program staff to perform on-site reviews of sub-recipients. Subrecipients that terminate participation in Special Education programs, also have on-site reviews performed

C. Subrecipients will be contacted and the on-site reviews will be scheduled. A letter from the Audit Supervisor of the Federal Audit Section will confirm this contact. This letter will include the starting date and location of the fieldwork, the number of auditors that will perform the fieldwork, the scope of the review (fiscal years and projects to be reviewed), and the records that will be required for the fieldwork.

D. Fieldwork may last for varying lengths of time. The length of time the fieldwork could take will be determined by several factors. These factors include, but are not limited to, the number of fiscal years to be reviewed, the number of projects to be reviewed, the records available for review, the accounting system of the subrecipient, the auditor's access to these records, previous review findings and their resolution, and any current findings that are discovered.

E. The fieldwork will include, but not limited to, the examination and review of the grant award, including the budget and all expenditure categories on the reimbursement claims for which sub recipients received reimbursement. These categories are as follows:

1. salaries;
2. employee benefits;
3. purchased professional and technical services;
4. other purchased services;
5. supplies;
6. property;
7. other objects; and
8. other uses of funds.

F. At the end of the fieldwork, the auditors will meet with the subrecipient in an exit conference to discuss the review results including any findings.

G. A preliminary report will be prepared and sent to the subrecipient. The Federal Audit Section Audit Supervisor signs this preliminary report, which is then mailed to the subrecipient. The subrecipient has fifteen business days from the date of the preliminary report to respond to any findings. Subrecipient responses are examined to determine whether the findings should be adjusted and/or eliminated from the preliminary report. If no response is received, then the report is considered accepted by the subrecipient. After either of these two instances has occurred, a final report will be sent to the State Superintendent of Education for signature. Once signed, it will be returned to the Federal Audit Section and mailed to the subrecipient with a copy forwarded to the Division of Special Populations. The letter will instruct the subrecipient to contact the Division of Special Populations for audit resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§505. Verification of Compliance Applicable Laws and Regulations for Non-supplanting, Maintenance of Effort, Excess Cost and other financial information during the award period.

A. Local education agencies (LEA) must annually prepare and submit Non-Supplanting, Maintenance of Effort and Excess Cost Verification forms to the Division of Education Finance by April 15 of each year. Approval of the LEA application and budget for Special Education program funds is contingent on the receipt and verification of the items and amounts reported on these forms. Verification of compliance by LEAs with Non-Supplanting, Maintenance of Effort and Excess Cost laws and regulations is performed. The amounts reported on these forms are also verified. This verification process uses the prior year Annual Financial Report (AFR) and current year budget along with the Excess Cost and Non-Supplanting forms submitted by the LEAs. Once compliance with applicable Non-Supplanting, Maintenance of Effort and Excess Cost laws and regulations has been determined, the forms are forwarded to the Division of Education Finance, Federal Budget Section.

B. Other special education program financial information is also verified as to accuracy and correctness by Division of Education Finance Federal Audit Section staff. These verifications may be conducted at the request of Division of Special Populations staff, sub recipients, and other governmental agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§507. Verification of the Accuracy of the Child Count

A. SBESE establishes the policy to seek to recover any funds made available under IDEA -Part B for services to any child who is determined to be classified erroneously as eligible to be counted.

B. Determination of eligible children shall be accomplished through the verification procedures of the SDE regarding the accuracy of the child count. In order to verify the accuracy of each count submitted, the SDE will conduct the following activities:

1. The current child count from each school system shall be compared with the previous count. In addition, the current child count incidence figures from each school system shall be compared with incidence figures from the previous state child count.

2. An on-site monitoring visit to verify the accuracy of the child count will be conducted in selected LEAs each year. If necessary, each system can be monitored for the previous years to verify the accuracy of the child count. During the monitoring of each LEA, the monitors will select at least ten names from the child count report. The LEA must provide the student's name, date of birth, evaluation report, IEP, class rosters, and any other information that may be necessary to verify the accuracy of the count.

3. Administrative on-site reviews are conducted in selected LEAs each year. Any multi-disciplinary evaluation reviewed and found not to be in compliance with State guidelines, to the extent that it cannot be determined that the student is a student with a disability, will result in the exclusion of that child from the child count.

4. If a child's IEP is monitored during the on-site review process and it is determined that the child is not receiving all the special education and related services specified on the IEP, the child will be excluded from the child count.

5. The LEA will be afforded an opportunity to present supportive or explanatory documentation to refute the DSP findings. If the evidence cannot justify the count, the count will be disallowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

§509. Recovery of Funds for a Misclassified Child

A. If the LEA has received funds based on an erroneous count and the DSP has documented the extent of the error, the SDE will either reduce the grant award if the error occurred in the current budget and all of the funds have not been expended or request that the LEA return such funds. In the event the LEA refuses to comply, within ten business days these procedures will be followed.

1. The DSP will submit written documentation of the error in the count to the State Superintendent of Education.

2. Within 10 business days of this submission, the State Superintendent will request that the SBESE require the LEA to repay the funds.

3. The SBESE has the responsibility to offer an opportunity for a hearing to an LEA prior to a determination

to withhold funds. (Refer to Section 955 of the Louisiana Administration Procedures Act.)

4. Funds recovered by the SDE and the SBESE will be handled within the guidelines set forth by OSEP, U.S. Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:

Interested persons may submit written comments until 4:30 p.m., January 9, 2004, 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 1922? Compliance
Monitoring Procedures**

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

There are no estimated implementation costs to state or local governmental units resulting from this proposed Rule other than for printing costs.

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 this measure.

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

Adoption of this Rule would provide benefits to public school students with disabilities by ensuring, through monitoring, that services are provided in an appropriate fashion. The proposed Rule clarifies how school systems will be monitored for special education programming and the sanctions that will be implemented for systems found not to be in compliance with federal and state guidelines.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment resulting from this proposed rule.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0311#094

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Scholarship/Grant Programs? On-Line Application
(LAC 28:IV. 301, 501, 503, 504, 505, 506, 507,
703, 705, 803, 805, 903, 907, and 1103)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and 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.

The full text of this proposed Rule can be viewed in the Emergency Rule section of this *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., December 10, 2003, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs
On-Line Application**

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

These changes will result in additional, but undetermined administrative costs during implementation; however, these costs should be recovered over the long term from savings that are anticipated because the new procedures will reduce the number of students who must be manually processed. There will be nominal cost for the publication of Rules in the *Louisiana Register*.

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

No effect on revenue collections is anticipated.

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

There are no estimated costs and/or economic benefits resulting from these measures.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment resulting from these measures.

George Badge Eldredge
General Counsel
0311#028

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Youth ChalleNge Skills Training Program (GO-Youth)
(LAC 28:IV.Chapter 15, 1701, 1901, 1903, and 2103)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and 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.

The full text of this proposed Rule can be viewed in the Emergency Rule section of this *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., December 10, 2003, to

Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Youth ChalleNGe Skills
Training Program (GO-Youth)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The 2003 Appropriations Act includes \$33,379 for funding the GO-Youth ChalleNGe Program. A BA-7 has been submitted to make the fund available for use by this agency.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated effects on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed changes are based on Act 826 of the 2003 Regular Session of the Louisiana Legislature established the Grant Opportunity for Youth ChalleNGe Skills Training Program (GO-Youth ChalleNGe Program) to be administered by the commission. The program is an adjunct to the Louisiana National Guard's youth ChalleNGe Program.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The act is designed to enhance the employment opportunities of participants who successfully complete the Youth ChalleNEe Program and earn a high school equivalency diploma (GED) by providing tuition for occupational and skill training at an eligible Louisiana institution.

George Badge Eldredge
General Counsel
0311#030

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT
Tuition Trust Authority
Office of Student Financial Assistance**

Bylaws (LAC 28:VI.209)

The Louisiana Tuition Trust Authority announces its intention to amend its START Savings Program Rules (R.S. 17:3091 et seq.).

The 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 Tuition Trust Authority

Chapter 2. Bylaws

§209. Committees

A. Standing Committees. Unless and until otherwise decided by the vote of a simple majority of the membership

of the authority, the standing committees of the authority shall consist of the following:

- 1. executive committee;
- 2. budget and finance committee;
- 3. investment committee;
- 4. planning committee;
- 5. rules committee; and
- 6. audit committee.

B. - I. ...

J. Rules Committee. The audit committee shall consist of not less than six members of the authority. Normally, to this committee shall be referred all matters involving audits of any program administered by the authority.

K. Special Committees

1. As the necessity therefor arises, the chairman may, with the concurrence of the authority, create special committees with such functions, powers and authority as may be delegated.

2. The chairman may appoint ad hoc committees for special assignments for limited periods of existence not to exceed the completion of the assigned task.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3093 et seq.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:1655 (December 1997), amended LR 27:190 (February 2001), LR 27:1221 (August 2001), LR 30:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., December 10, 2003 to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

- 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)
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 are no estimated effects on competition and employment resulting from these measures.

George Badge Eldredge
General Counsel
0311#044

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Tuition Trust Authority Office of Student Financial Assistance

Student Tuition and Revenue Trust
(START Saving) Program? Trade Date
(LAC 28:VI.107, 305, and 309)

The Louisiana Tuition Trust Authority announces its intention to amend its START Savings Program Rules (R.S. 17:3091 et seq.).

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

The full text of this proposed Rule can be viewed in the Emergency Rule section of this *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., December 10, 2003, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Student Tuition and Revenue Trust (START Saving) Program? Trade Date

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 revisions.

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

There is no cost anticipated to result from this change. Amending Sections 107, 305, and 309 of the Authority's START Rules to assign a trade date for investment changes in equity options and to allow up to 100 percent of disbursements to be made to account owners and/or beneficiaries will provide account owner additional flexibility and ease in managing their accounts.

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
0311#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

POST Approved Shotgun Course
(LAC 22:III.4725)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice hereby gives notice of its intent to promulgate rules and regulations relative to the training of peace officers. The Peace Officers Standards and Training Council approved the Shotgun Course at its meeting on September 9, 2003.

Title 22 CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4725. POST Approved Shotgun Course

A. Slug Phase. If rifled slugs are issued, the instructor shall include the slug phase in the Basic Shotgun Course. Option one will always be used where a 50-yard shooting position is available.

1. Option One (50 yards)

a. The officer, using the assembly load method, will load two rifled slugs and take aim.

b. On command, the officer will fire one round from the shoulder in the standing position and one round in the kneeling position, from cover, with or without support. Time Limit: 15 seconds.

2. Option Two (25 yards)

a. The officer, using the assembly load method, will load two rifled slugs and take aim.

b. On command, the officer will fire one round from the shoulder in the standing position and one round from the kneeling position, from cover, with or without support. Time limit: 7 seconds.

3. Target: B-27 or P.O.S.T. qualification (P-1)

4. Scored: B-27: Hit inside eight ring scores five points; hit inside seven ring scores four points, hit inside black scores three points.

5. Scored: P.O.S.T. (P-1): Hit inside scoring ring scores five points, hit in the green scores four points.

B. Buckshot Phase. Recommend use of 9pellet "OO." Buckshot (may also be fired with any buckshot).

1. 25 Yards (five rounds buckshot)

a. On command, using the assembly load method, the officer will load two rounds of buckshot and come to

"Ready Gun Position." Officer will have three additional rounds of buckshot on his/her person.

b. On command, officer will fire two rounds from the shoulder (standing), then using the combat load method, fire three rounds from the shoulder (kneeling). Total time: 35 seconds.

2. 15 Yards (five rounds buckshot)

a. Officer will start with five rounds of buckshot on their person and empty shotgun.

b. On command, the officer, using the combat load method, load five rounds of buckshot and fire two rounds from the shoulder (standing). Total time: 25 seconds.

c. Officer will then cover target.

d. On command, fire one round from the shoulder (standing). Total time: 2 seconds.

e. On command, fire one round from the shoulder (standing). Total time: 2 seconds.

f. On command, fire one round from the shoulder (standing). Total time: 2 seconds.

3. Target: B-27 or P.O.S.T. qualification (P-1).

4. Scoring: One point for hit on black of B-27 target or one point for hit on green of P-1 target.

5. Total score should equal 75 percent with or without the Slug Phase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 30:

Interested persons may submit written comments on this proposed Rule no later than January 1, 2004, at 5 p.m. to Bob Wertz, Deputy Assistant Director, Commission on Law Enforcement and Administration of Criminal Justice, 1885 Wooddale Boulevard, Room 1230, Baton Rouge, LA 70806.

Michael A. Ranatza
Executive Director

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

RULE TITLE: POST Approved Shotgun Course

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

It is estimated that implementation of the proposed Rule will not cause an increase in expenditures. The proposed Rule change merely provides that the targets in the shotgun course will now be the same of those targets in the basic POST qualification course.

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

It is estimated that implementation of the proposed Rule will not increase revenue collections of state or local governmental units.

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

It is estimated that implementation of the proposed Rule will have little or no effect on directly affected persons or non-governmental groups. The adoption of an approved target

standard for the shotgun course will align the shooting targets with the POST basic qualification courses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on either competition or employment.

Michael A. Ranatza
Executive Director
0311#045

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Group Benefits**

**MCO Plan of Benefits? Lifetime Maximum Benefits
(LAC 32:IX.701)**

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) 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 finds that it is necessary to revise and amend provisions of the MCO plan document relative to lifetime maximum benefits to implement a one million dollar per person lifetime maximum for all benefits except pharmacy benefits. This action is necessary in order to maintain the financial integrity of the plan for the plan year beginning July 1, 2004, and in subsequent years.

Accordingly, OGB hereby gives Notice of Intent to adopt the following Rule to become effective July 1, 2004.

Title 32

EMPLOYEE BENEFITS

**Part IX. Managed Care Option (MCO) Plan of Benefits
Chapter 7. Schedule of Benefits MCO**

§701. Comprehensive Medical Benefits

A. ...

1. Lifetime Maximum Benefits

a. Lifetime maximum for all benefits except pharmacy benefits (outpatient prescription drug benefits) per person	\$ 1,000,000
b. Lifetime maximum for all pharmacy benefits (outpatient prescription drug benefits) per person	\$ 250,000

A.2. - D.3.c. ...

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 29:901 (June 2003), LR 30:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, except as follows. For

those families participating in the MCO Plan who experience catastrophic illness or injury requiring extensive medical treatment, no benefits in excess of \$1,000,000 will be payable for any individual.

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 January 7, 2004.

A public hearing will be held on Wednesday, January 7, 2004, from 6:00 p.m. until 7:30 p.m., at the Louisiana State Police Training Academy Auditorium, 7901 Independence Boulevard, Baton Rouge, LA 70806. Interested persons may appear and present their views at that time.

A. Kip Wall
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: MCO Plan of Benefits
Lifetime Maximum Benefits**

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

It is estimated by OGB's consulting actuary, Milliman, USA, that instituting a \$1,000,000 lifetime maximum benefit for the Managed Care Option (MCO) will result in a cost avoidance to the State of Louisiana and Office of Group Benefits of approximately \$500,000 for Fiscal Year 2005. If overall medical inflation continues at 15 percent for the next several years, the cost avoidance for Fiscal Year 2006 will be \$580,000 and the cost avoidance for Fiscal Year 2007 will be \$660,000. 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 changed to bring the Managed Care Option lifetime maximum equal to the Preferred Provider Organization lifetime maximum.

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

This Rule allows the Office of Group Benefits to institute a lifetime maximum benefit of \$1,000,000 for those participants that are members of the Managed Care Option. For those families participating in the MCO plan who experience catastrophic illness or injury requiring extensive medical treatment, no benefits in excess of \$1,000,000 will be payable for any individual. There are currently 26,000 employees and retirees that are covered by this option, and claim processing statistics indicate that less than 20 individuals are estimated to be affected by this change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment should not be affected.

A. Kip Wall
Chief Executive Officer
0311#052

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Racing Commission**

Claiming Rule (LAC 35:XI.9905 and 9913)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:XI.Chapter 99 "Claiming Rule" by reinstating §9905 "Timing of Entering Next Claiming Race" and amending §9913 "Vesting of Title; Tests" to its previous wording in the opening sentence. The Commission finds these actions necessary to insure proper claiming methods and that the timing thereof is properly adhered to. This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35
HORSE RACING**

Part XI. Claiming Rules and Engagements

Chapter 99. Claiming Rule

§9905. Timing of Entering Next Claiming Race

Note: This Rule is being reinstated; it was repealed in 1996.

A. Except as otherwise provided herein, a claimed horse shall not enter in starter, optional or claiming races for 30 days after being claimed in a race in which the determining eligibility price is less than 25 percent more than the price at which the horse was claimed. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter whenever necessary so the horse may start on the 31st day following the claim for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper. A similar Rule in other states will be recognized and enforced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 30:

§9913. Vesting of Title; Tests

A. Title to a claimed horse shall be vested in the successful claimant at the time the horse becomes a starter. The successful claimant shall then become the owner of the horse whether alive or dead, sound or unsound, or injured at any time after leaving the paddock, during the race or after. However, the successful claimant may request on the claim blank at the time he makes his claim that the horse be tested for the presence of equine infections anemia via a Coggins test. Should this test prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana. The expense of the Coggins test and the maintenance of the horse during the period requested for the test shall be absorbed by the successful claimant. If such a test is requested the claimed horse will be sent to the retention barn of the Louisiana State Racing Commission where the state veterinarian will draw a blood sample, which sample shall be sent to a laboratory approved

by the Louisiana Livestock Sanitary Board for the conduct of such test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), repromulgated LR 3:42 (January 1977), LR 4:285 (August 1978), amended LR 5:136 (June 1979), amended by the Office of the Governor, Division of Administration, Racing Commission LR 30:

The domicile office of the Louisiana State Racing Commissioner is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or C.A. Reiger, assistant director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 48304898, for more information. All interested persons may submit written comments relative to this proposed Rule through October 10, 2003, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Claiming Rule**

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

There are no anticipated costs or savings to state or local governmental units associated with this Rule, other than one-time costs directly associated with its publication.

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

The Rule change is intended to positively affect the wagering public by encouraging more wagering through better competition. As revenue collections of the state are tied directly to wagering, the state should realize an indeterminable increase in tax collections.

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

There are no costs to directly affected persons or non-governmental groups. However, the Rule change is intended to positively affect the wagering public by encouraging more wagering through better competition. As revenue collections of the state are tied directly to wagering, the state should realize an indeterminable increase in tax collections. In effect, the claiming Rule is being amended back to its former and original wording. The Rule was initially amended during the downturn of racing to spur increased ownership of racehorses through the claiming process at a time of stagnant wagering. With the advent of slot machines in racetracks and the exceptionally large purses produced by slot machines, the previous version of the claiming Rule tended to skew the competition by allowing successful claimants to run at any claiming price, often times at the expense of competition. Returning the claiming rule to its original form is intended to have a positive effect on claiming procedures and recreates an environment most favorable to competition. The change in the Rule is expected to result in increased wagering due to better competition among classes of horses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is a substantial and positive effect on competition in the revised and amended claiming Rule. Under the previous Rule, which was adopted in an environment of declining horse

ownership and stagnant wagering, claimed horses did not have to run for a raised claiming price upon being claimed. With the advent of slot machine gaming at racetracks where purses are now much larger than the claiming prices, unscrupulous owners claim a horse out of a fair and competitive race for a fair selling or claiming price, drop the horse to the very bottom of the claiming ranks in its next start where the horse is a prohibitive favorite with extremely low odds. When this happens, the horse dropping down to the bottom of the claiming ranks usually wins easily. The owner reaps a large profit from the purse and more profit if someone claims the horse again through the claiming procedure due to the horse being misplaced competitively. This practice, in effect, stifles and reduces competition and, at the same time, reduces interest in wagering since the average bettor expects a fair return on wagers. By amending the claiming Rule back to its original form, fair competition has been restored by forcing successful claimants to run claimed horses for a 25 percent raise for thirty days, thereby keeping claimed horses at competitive levels for a longer period of time. As a result, the bettor has a more competitive field of horses from which to choose. This creates more interest in wagering where a competitive field gives the bettor a greater chance to receive a more substantial return on wagers. This Rule change has no anticipated effect on employment.

Charles A. Gardiner, III
Executive Director
0311#096

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Dentistry**

Dental Assistance Authorized Duties
and Pediatric Enteral Anesthesia
(LAC 46:XXXIII.501 and 1506)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.501. No preamble has been prepared.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Profession

Chapter 5. Dental Assistants

§501. Authorized Duties

A. - B.19. ...

20. Exception: A dental assistant who has been employed by a licensed, practicing dentist and has worked as a dental assistant prior to July 30, 1992, may continue performing the following duties without registering as an expanded duty dental assistant. These duties must also be performed under the direct, on-premises supervision of the dentist:

- a. apply cavity liners, excluding capping of exposed pulpal tissue;
- b. place, wedge or remove matrices for restoration by the dentist;
- c. place and remove periodontal dressings;
- d. place and remove retraction cords.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Dentistry (October 1970), amended LR 2:186 (June 1976), LR 7:586 (November 1981), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:965 (November 1989), LR 16:505 (June 1990), LR 19:205 (February 1993), LR 30:

Chapter 15. Anesthesia/Analgesia Administration

§1506. Pediatric Enteral Anesthesia

A. In order to receive a permit to administer pediatric enteral anesthesia, the dentist shall:

1. have emergency equipment and drugs available in an emergency kit or crash cart which is immediately available to the dental operator where the sedation procedure is being performed. These kits must include the necessary drugs and equipment to resuscitate a non-breathing unconscious patient and sustain life while the patient is being transported. There should be a list in each kit of the contents and a record of when the contents were checked. The following drugs should be available in the kit:
 - a. epinephrine;
 - b. vasopressor;
 - c. corticosteroid;
 - d. bronchodilator;
 - e. appropriate drug antagonists;
 - f. antihistaminic;
 - g. anticholinergic;
 - h. coronary artery vasodilator;
 - i. anticonvulsant;
 - j. oxygen;
 - k. 50 percent dextrose or other antihypoglycemic;
2. a working pulse oximeter;
3. proper record keeping mechanism in addition to a controlled substance log;
4. an accurate scale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:793.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 30:

Interested persons may submit written comments on this proposed Rule to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 60 days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

C. Barry Ogden
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Dental Assistance Authorized Duties and Pediatric Enteral Anesthesia

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

A cost of \$500 is estimated to implement these Rule changes. Notification of these Rule changes will be included in a mass mailing to all licensees which has already been budgeted for notification of previous rulemaking changes. It is

anticipated that these Rule changes will be sent to licensees during the summer of 2004.

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

There will be minimal or no effect on revenue collections by the Louisiana State Board of Dentistry or any other state of local governmental unit.

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

There will be no economic benefits to directly affected persons or non-governmental groups. However, licensees administering oral sedation to pediatric patients may incur one-time costs in the range of \$500 if they do not already have all of the necessary equipment required for the safety of pediatric patients.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

C. Barry Ogden
Executive Director
0311#010

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Licensed Professional Vocational Rehabilitation Counselors Board of Examiners

Licensure Requirements and Advisory Ethics Opinions
(LAC 46:LXXXVI.703, 1801 and 1803)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners pursuant to the authority vested in it by R.S. 37:3445 intends to amend the Professional and Occupational Standards pertaining to Vocational Rehabilitation Counselors in order to provide for the requirements for licensing, and to add Chapter 18 to provide for advisory ethics opinions. The proposed amendments to the Rules are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXVI. Vocational Rehabilitation Counselors Chapter 7. Requirements for Licensure and Renewal of License

§703. Requirements

A. - A.4. ...

5.a. has received a master's degree in vocational rehabilitation counseling or related field and two years of experience under the direct supervision of a licensed vocational rehabilitation counselor. An applicant may subtract one year of the required professional experience for successfully completing Ph.D. requirements in a rehabilitation counseling program acceptable to the board.

i. In order to meet the requirements of licensure, one must have a degree in vocational rehabilitation counseling or an approved related degree as listed below:

- (a). Clinical or Counseling Psychology;
- (b). Professional Guidance and Counseling;
- (c). Rehabilitation Studies (O.T. and P.T. excluded);

(d). Special Education (as determined by the board).

b. The board will consider as a feasible alternative to a vocational rehabilitation degree, a related degree as listed in Clause i above which includes 42 hours of qualifying courses from an accredited college or university which meet the academic and training content established by the board and listed in Clause ii below. Both Clauses i and ii are at the discretion of the board.

ii. Academic and Training Content

	Hours
Orientation of Vocational Rehabilitation	3
Statistics	3
Medical and/or Psycho-Social Terminology of Disabilities Relative to Vocational Performance	3
Psychological and Social Effects of Disabilities	3
Tests and Measurements	3
Occupational Information and/or Job Placement and Job Development	3
Analysis of the Individual	3
Theories of Personality	3
Theories and Techniques of Counseling	6
Demonstrations and Practice of Counseling	3
Field Work or Practicums	9-12
Psychiatric Disorders and/or Substance Abuse	3
Vocational Analysis or Assessment of Persons with Disabilities	3
Introduction to Psychology	3
Abnormal Psychology	3
Introduction to Sociology	3
Developmental Psychology (Adult or Adolescent)	3
Ethics of Counseling	3
	66

c. A candidate for licensure must have 42 of the 66 hours enumerated, completing each course with a "C" or better. Any substitutions of similar course work will be limited and at the discretion of the board. As of July 20, 1996, anyone possessing an unrelated degree, not specific in the above text, will not be accepted even if they pursue additional course work. Should they obtain an additional degree in the related areas as specified in Clause i above, this will be considered.

6. The board shall issue a license to each applicant who files an application upon a form designated by the board and in such a manner as the board prescribes, accompanied by such fee required by R.S. 37:3447 and who furnishes satisfactory evidence to the board that he has met the requirements of Paragraphs A.1-4 and has a bachelor's degree in vocational rehabilitation counseling or related field as defined in Paragraph 703.A.5 and five years of work experience working under the direct supervision of a licensed vocational rehabilitation counselor which period of supervision began prior to September 1, 2004. Except as provided in this Paragraph 703.A.6, after September 1, 2009 no license shall be issued to any applicant not meeting the requirements of Paragraphs 703.A.1-5.

B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3447.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 15:277 (April 1989), amended

by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 19:1570 (December 1993), LR 22:582 (July 1996), LR 30:

Chapter 18. Guidelines for Requesting Advisory Opinions from LLPVRC's Ethics Committee

§1801. General

A. Consistent with the intent of the Louisiana Licensed Professional Vocational Rehabilitation Counselors (LLPVRC) Code of Professional Ethics for Licensed Rehabilitation Counselors, the LLPVRC Ethics Committee recommends that licensed rehabilitation counselors who are considering seeking advisory opinions first consult with other rehabilitation counselors and colleagues who are knowledgeable about ethics in order to attempt to resolve questions that may easily be addressed by other knowledgeable parties. If these attempts do not result in resolution of the matter, individuals may request advisory opinions from the LLPVRC Ethics Committee.

B. The committee provides advisory opinions on selected situations having ethical implications. These advisory opinions are provided as a general educational service and are rendered in response to limited and unverified information provided to the committee. Therefore, it should not be construed as direct advice regarding the unique or specific ethical or legal action recommendations that should be followed regarding the issues raised. The considerations described by the committee's advisory opinion should be regarded only as general educational assistance and not as specific direction in any particular instance.

C. Requests should not be filed if there is reason to believe that a violation of the code has occurred. Those attempting to determine if alleged behavior violates the code may receive a response to a request for an advisory opinion that may later appear to contradict a ruling made if a complaint is actually filed. This possible incongruity might be due to the fact that advisory opinions do not allow for full disclosure of all available information in the matter.

D. Information presented in a request for an advisory opinion and the committee's response to that ruling may be presented for educational purposes to other parties in a sanitized format.

E. LLPVRC's Ethics Committee meets four times per year. Requests received will be scheduled for review at the next scheduled meeting of the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3441-3452 and 36:478(I).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:

§1803. Requesting an Advisory Opinion

A. Requests should be clear and concise and should include both the scenario and the requestor's opinion as to the standard(s) in the LLPVRC Code of Professional Ethics for Licensed Rehabilitation Counselors that relate to the matter as well as the requestor's interpretation of how to apply the standard(s) to the scenario. Further, if the requestor is a LRC, the request should advise as to the results of

consultation with other rehabilitation counselors and colleagues.

B. Requests should be sent in writing to:

Louisiana Licensed Professional Vocational
Rehabilitation Counselors Board of Examiners
P.O. Box 41594
Baton Rouge, LA 70835-1594
Attn: Ethics Committee

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3441-3452 and 36:478(I).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:

Family Impact Statement

The Licensed Professional Vocational Rehabilitation Counselors Board of Examiners hereby issues this Family Impact Statement: The proposed Rule related to the board's licensing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

The proposed action of the Licensed Professional Vocational Rehabilitation Counselors Board of Examiners complies with the statutory law administered by the board, R.S. 37:3441-3452. A preamble has been prepared with respect to the change in the educational requirements for licensing. A copy may be obtained from the office of the Licensed Professional Vocational Rehabilitation Counselors Board of Examiners at the address set forth hereafter and interested persons may submit written comments on the proposed Rule to Carla Seyler at P.O. Box 41594 Baton Rouge, LA 70835 or by FAX at 225-922-1352 who will be responsible for responding to inquiries concerning this proposed action. The deadline for receipt of all written comments is 4:30 p.m. on January 10, 2004.

Carla Seyler
Chairperson

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Licensure Requirements and Advisory Ethics Opinions

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

The only implementation cost is the estimated \$875 cost of preparation and publishing the Rule in the *Louisiana Register*.

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

There will be no decrease or increase in revenues.

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

Individuals engaged in activities which require a license pursuant to these Rules who are not currently licensed may experience some increased educational expenditures as required by the licensing procedure in order to obtain a license. These requirements are being phased in and will not become fully applicable for five years which allows ample time for those expecting to seek a license to plan for their educational requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment in the public and private sectors. While those not possessing a masters degree will be unable to obtain a license under the new Rule once fully implemented, those who could become licensed under the old Rule should be fully capable of obtaining a masters degree instead of meeting the longer supervision requirements for those with bachelors degrees.

Stephen W. Glusman
General Counsel
0311#009

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

Adult Day Health Care? Prospective Payment System
(LAC 50:II.10939)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:II 10939 under 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 Human Resources, Office of Family Security adopted a rule establishing the Standards for Payment for the Adult Day Health Care Program (*Louisiana Register*, Volume 11, Number 6). The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing subsequently promulgated a rule that amended the reimbursement methodology for Adult Day Health Care services from a facility specific rate based on historical cost to a statewide rate based on set percentages over the median by cost category (*Louisiana Register*, Volume 28, Number 11). The bureau promulgated an emergency rule amending the prospective payment system reimbursement methodology for adult day health care services (*Louisiana Register*, Volume 29, Number 8). The bureau now proposes to promulgate a Rule to continue the provisions contained in the August 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.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 109. Standards for Payment? Adult Day Health Care

§10939. Prospective Payment System

A. General Provisions

1. Development. Adult Day Health Care (ADHC) providers shall be reimbursed a per diem rate for services

provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all adult day health care recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

2. The prospective payment methodology establishes blended rates consisting of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs.

3.- 3.d. ...

4. Rate Setting. Adult day health care providers shall be reimbursed blended rates consisting of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs plus a direct care incentive.

a. The PPS rate is based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports.

i. Direct Care Costs. A statewide base rate for direct care is computed at 115 percent of the median facility per diem direct care costs submitted on all full year cost reports except those for which an audit disclaimer has been issued. Direct care costs are trended forward using the Consumer Price Index (CPI)? Medical Services.

ii. Care Related Costs. A statewide base rate for care related costs is computed at 105 percent of the median facility per diem care related costs submitted on all acceptable full year cost reports except those for which an audit disclaimer has been issued. Care related costs are trended forward using the CPI? All Items.

iii. Administrative and Operating Costs (AOC). A statewide base rate for administrative and operating costs is computed at 105 percent of the median facility per diem administrative and operating costs submitted on all acceptable full year cost reports except for those for which an audit disclaimer has been issued and are trended forward using the CPI? All Items.

iv. Property. The property rate is computed at the median of property costs submitted on all acceptable full year cost reports. Inflation will not be added to property costs.

b. The facility specific prospectively determined rate is based on facility specific reasonable allowable costs. The facility specific prospectively determined rate shall be limited to 80 percent of the nursing facility intermediate care II rate in effect on July 1, 2002 exclusive of the provider fee.

i. Direct Care Costs. Facility specific direct care is based on the facility specific per diem reasonable allowable direct care costs submitted on the acceptable FY 2001 full year cost report. Direct care costs are trended forward using the Consumer Price Index (CPI)? Medical Services.

ii. Care Related Costs. Facility specific care related cost is based on the facility specific per diem reasonable allowable care related costs submitted on the acceptable FY 2001 full year cost report. Care related costs are trended forward using the CPI? All Items.

iii. Administrative and Operating Costs (AOC). Facility specific AOC is based on the facility specific per diem reasonable allowable AOC submitted on the acceptable FY 2001 full year cost report. AOC are trended forward using the CPI? All Items.

iv. Property. Facility specific property cost is based on the facility specific per diem reasonable allowable property costs submitted on the acceptable FY 2001 full year cost report. Inflation will not be added to property costs.

v. Facilities participating prior to August 1, 2003 who have not filed a full year acceptable cost report shall have the facility specific prospectively determined rate for August 1, 2003 through June 30, 2004 based on budgeted data and limited to 80 percent of the nursing facility weighted average case mix rate in effect on July 1, 2003.

vi. For rates effective July 1, 2004 and thereafter, facilities receiving audit disclaimers shall receive a rate equal to the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports trended forward in accordance with this §10939.

c. All trending shall be from the mid-point of the year preceding the cost report year to the midpoint of the year preceding the rate year.

d. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply only when the legislature allocates funds for this purpose.

e. A direct care incentive based on legislative appropriation shall be added to the per diem rate effective August 1, 2003.

5. Total Per Diem Rate. The per diem rate for providers filing acceptable full year cost reports is the sum of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports plus 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs plus the direct care incentive.

6. New providers enrolled in the Medicaid Program effective August 1, 2003 and thereafter shall receive the PPS rate based on the base year median reported cost for all ADHC providers filing acceptable cost reports trended forward in accordance with this §10939 plus the direct care incentive.

7. Minimum Rate. The minimum adult day health care rate shall be the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports plus the direct care incentive.

8. Cost Settlement. The direct care cost component and the direct care incentive shall be subject to cost settlement. Should an ADHC facility's cost report reveal that the provider did not expend an amount equal to 90 percent of the median direct care rate component trended forward for direct care services plus 90 percent of the direct care incentive, the Medicaid program will recover the difference

between 90 percent of the median direct care rate component trended forward for direct care services plus 90 percent of the direct care incentive and the actual direct care amount expended.

B. Cost Reporting

1. Providers of ADHC services are required to file annual acceptable cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this section and the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the facility for no less than five years following the date reports are submitted to the bureau. A chart of accounts and an accounting system on the accrual basis or converted at year end are required in the cost reporting preparation process. The bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

B.2. - C.1.e.iv. ...

2. Rate Determination

a. Calculation of Base Rate. Rates for both the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and the facility specific prospectively determined rate based on facility specific reasonable allowable costs are calculated from cost report data. Allowable costs include those costs incurred by providers to conform to state licensure and federal certification standards. General cost principles are applied during the desk review and audit process to determine allowable costs. These general cost principles include determining whether the cost is ordinary, necessary, and related to the delivery of care; the cost is what a prudent and cost conscious business person would pay for the specific goods or services in the open market or in an arm's length transaction; and the cost is for goods or services actually provided to the center. Through the desk review and/or audit process, adjustments and/or disallowances may be made to a provider's reported costs. "HIM-15," the Medicare Provider Reimbursement Manual, is the final authority for allowable costs unless the Louisiana Department of Health and Hospitals has set a more restrictive policy.

b. - c. ...

d. The inflated median shall be increased to establish the base rate median component as follows.

i. The inflated direct care median shall be multiplied times 115 percent to establish the direct care base rate component.

ii. The inflated care related median shall be multiplied times 105 percent to establish the care related base rate component.

iii. The administrative and operating median shall be multiplied times 105 percent to establish the administrative and operating base rate component.

e. At least every three years, audited and desk reviewed cost report items will be compared to the rate components calculated for the cost report year to insure that the rates remain reasonably related to costs.

f. Formulae. Each median cost component shall be calculated as follows.

i. Direct Care Cost Component. Direct care per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for Medical Services. The direct care rate component shall be set at 115 percent of the inflated median.

ii. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

iii. Administrative and Operating Cost Component. Administrative and operating per diem cost from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI?All Items index for December of the year proceeding the base rate year by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

iv. Property Cost Component? Property. The property per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

g. Formulae. Each facility specific prospectively determined cost component shall be calculated as follows.

i. Direct Care Cost Component. The direct care per diem costs from each facility's full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this §10939.

ii. Care Related Cost Component. The care related per diem costs from each facility's full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this §10939.

iii. Administrative and Operating Cost Component. The administrative and operating per diem cost from each facility's acceptable full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this §10939.

iv. Property Cost Component? Property. The property per diem costs from each facility's acceptable full year cost reports shall be the property cost component. Inflation will not be added to property costs.

v. Facilities participating prior to August 1, 2003 who have not filed a full year acceptable cost report shall have the facility specific prospectively determined rate for August 1, 2003 through June 30, 2004 based on budgeted

data and limited to 80 percent of the nursing facility weighted average case mix rate in effect on July 1, 2003.

vi. For rates effective July 1, 2004 and thereafter, facilities receiving audit disclaimers shall receive a rate equal to the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports trended forward in accordance with this Rule. No facility specific cost component will be included in the per diem of facilities receiving audit disclaimers.

h. - h.ii. ...

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 28:2356 (November 2002), amended LR 30:

Implementation of the provisions 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, 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 Monday, December 29, 2003 at 9:30 a.m. in the Wade O. Martin 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: Adult Day Health Care? Prospective Payment System

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 \$278,308 for SFY 2003-2004, \$312,220 for SFY 2004-2005 and \$321,586 for FY 2005-2006. It is anticipated that \$884 (\$442 SGF and \$442 FED) will be expended in SFY 2003-2004 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 \$698,914 for SFY 2003-2004, \$784,829 for SFY 2004-2005 and \$808,374 for SFY 2005-2006. \$442 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule will amend the prospective payment system methodology for Adult Day Health Care (ADHC) services from a facility specific rate based on historical cost to

a statewide rate based on set percentages over the median by cost category for 26 providers participating in the Medicaid Program. It is anticipated that implementation of this proposed rule will increase expenditures for adult day health care services by \$976,338 for SFY 2003-2004, \$1,097,049 for SFY 2004-2005 and \$1,129,960 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have no effect on competition or employment.

Ben A. Bearden
Director
0311#076

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hos pitals Office of the Secretary Bureau of Health Services Financing

All Inclusive Care for the Elderly
(LAC 50:XXIII.Chapters 1 - 9)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXIII.Chapters 1-9 in the Medical Assistance Program as authorized by RS. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department proposes to establish state regulatory and financial conditions relative to operation of Programs of All Inclusive Care for the Elderly (PACE) in Louisiana. Federal regulations promulgated in 42 CFR 460 et seq. establish the general structure and operational requirements for PACE programs, and require state participation in approval and monitoring of PACE activities. The state is allowed to specify additional requirements and processes to ensure that operational and safety considerations are adequately addressed, and is required to negotiate a rate of payment for Medicaid-eligible participants.

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 is anticipated to have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will provide an additional model for community-based long term care services that will enable elderly individuals to remain in their living arrangement of choice among family and friends.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XXIII. All Inclusive Care for the Elderly

Chapter 1. General Provisions

§101. Purpose and Scope

A. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implements the Program of All Inclusive Care for the Elderly (PACE) in accordance with federal regulations at 42 CFR 460 et seq., as published in the Federal Register on November 24, 1999 and amended on October 2, 2002, and as may be amended in the future. These regulations set forth:

1. the requirements that an entity must meet to be approved as a PACE organization that operates a PACE program under Medicare and Medicaid;
2. how individuals may qualify to enroll in a PACE program;
3. how Medicare and Medicaid payments will be made for PACE services;
4. provisions for federal and state monitoring of PACE programs; and
5. procedures for sanctions and terminations.

B. The purpose of the Program of All Inclusive Care for the Elderly is to provide prepaid, capitated, comprehensive health care services designed to meet the following objectives:

1. enhance the quality of life and autonomy for frail, older adults;
2. maximize dignity of, and respect for, older adults;
3. enable frail, older adults to live in the community as long as medically and socially feasible; and
4. preserve and support the older adult's family unit.

C. This Part sets forth the election of state options under the federal regulations and additional requirements established by the state for the efficient operation of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§103. Organization Application and Evaluation

A. A PACE organization shall be licensed as an adult day health care (ADHC) facility. The Department of Health and Hospitals (DHH) shall grant appropriate waivers of ADHC licensing requirements in instances where ADHC licensing regulations conflict with PACE requirements when such waivers are determined to have no adverse effect on participant health and safety and quality of life.

B. A PACE organization shall not be required to be licensed as a health maintenance organization under the Louisiana regulations for risk based entities.

C. A PACE organization must be a non-profit entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§105. Administrative Requirements

A. A PACE organization must have a fiscally sound operation, as demonstrated by the following:

1. total assets greater than total unsubordinated liabilities;
2. sufficient cash flow and adequate liquidity to meet obligations as they become due;
3. a net operating surplus or a financial plan for solvency that is satisfactory to the Center for Medicaid and Medicare Services (CMS) and the Department of Health and Hospitals.

B. A PACE organization shall operate under the control of an identifiable governing body such as a board of directors, which must include at least one community

representative. The following advisory committees shall also be established to advise the board of directors:

1. consumer advisory committee;
2. ethics committee;
3. restraint committee;
4. other committees as required by CMS and/or DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Chapter 3. Services

§301. Medicare and Medicaid Coordination

A. If a Medicare beneficiary or Medicaid recipient chooses to enroll in a PACE program:

1. the participant, while enrolled in a PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization; and

2. Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, co-payments, coinsurance, or other cost-sharing do not apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§303. Services Provided

A. The PACE benefit package for all participants, regardless of the source of payment, must include:

1. all Medicaid-covered services, as specified in the state's approved Medicaid plan;
2. interdisciplinary assessment and treatment planning;
3. primary care, including physician and nursing services;
4. social work services;
5. restorative therapies, including physical therapy, occupational therapy, and speech-language pathology services;
6. personal care and supportive services;
7. nutrition counseling;
8. recreational therapy;
9. transportation;
10. meals;
11. medical specialty services including, but not limited

to:

- a. anesthesiology;
- b. audiology;
- c. cardiology;
- d. dentistry;
- e. dermatology;
- f. gastroenterology;
- g. gynecology;
- h. internal medicine;
- i. nephrology;
- j. neurosurgery;
- k. oncology;
- l. ophthalmology;
- m. oral surgery;

- n. orthopedic surgery;
 - o. otorhinolaryngology;
 - p. plastic surgery;
 - q. pharmacy consulting services;
 - r. podiatry;
 - s. psychiatry;
 - t. pulmonary disease;
 - u. radiology;
 - v. rheumatology;
 - w. general surgery;
 - x. thoracic and vascular surgery; and
 - y. urology;
12. laboratory tests, x-rays and other diagnostic procedures;
13. drugs and biologicals;
14. prosthetics, orthotics, durable medical equipment, corrective vision devices, such as eyeglasses and lenses, hearing aids, dentures, and repair and maintenance of these items;
15. acute inpatient care, including:
- a. ambulance;
 - b. emergency room care and treatment room services;
 - c. semi-private room and board;
 - d. general medical and nursing services;
 - e. medical surgical/intensive care/coronary care unit;
 - f. laboratory tests, x-rays and other diagnostic procedures;
 - g. drugs and biological;
 - h. blood and blood derivatives;
 - i. surgical care, including the use of anesthesia;
 - j. use of oxygen;
 - k. physical, occupational, respiratory therapies, and speech-language pathology services; and
 - l. social services;
16. nursing facility care including:
- a. semi-private room and board;
 - b. physician and skilled nursing services;
 - c. custodial care;
 - d. personal care and assistance;
 - e. drugs and biologicals;
 - f. physical, occupational, recreational therapies, and speech-language pathology, if necessary;
 - g. social services; and
 - h. medical supplies and appliances;
17. other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§305. Excluded Services

- A. Services excluded from coverage are:
- 1. any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service;
 - 2. private room and private duty nursing services in an inpatient facility, (unless medically necessary), and nonmedical items for personal convenience such as telephone charges and radio or television rental (unless

specifically authorized by the interdisciplinary team as part of the participant's plan of care);

3. cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed part of the body resulting from an accidental injury or for reconstruction following mastectomy;

4. experimental medical, surgical or other health procedures;

5. services furnished outside of the United States except as follows:

a. in accordance with 42 CFR 424.122 through 424.124; or

b. as permitted under the state's approved Medicaid plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§307. Conditions of Service

A. A PACE organization must establish and implement a written plan to furnish care that meets the needs of each participant in all care settings 24 hours a day, every day of the year.

B. The PACE organization must furnish comprehensive medical, health, and social services that integrate acute and long-term care.

C. These services must be furnished in at least the PACE center, the home, and inpatient facilities.

D. The PACE organization may not discriminate against any participant in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability or source of payment.

E. The frequency of a participant's attendance at a center is determined by the interdisciplinary team, based on the needs and preferences of each participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§309. Emergency Services

A. A PACE organization must establish and maintain a written plan to handle emergency care. The written plan must ensure that CMS, the state, and PACE participants are held harmless if the PACE organization does not pay for emergency services.

B. Emergency care is appropriate when services are needed immediately because of an injury or sudden illness and the time required to reach the PACE organization or one of its contract providers would cause risk of permanent damage to the participant's health. Emergency services include inpatient and outpatient services that:

1. are furnished by a qualified emergency services provider, other than the PACE organization or one of its contract providers, either in or out of the PACE organization's service area. condition

2. are needed to evaluate or stabilize an emergency medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Chapter 5. Recipient Enrollment Eligibility

§501. Eligibility

A. In order to be eligible for services from a PACE site an applicant must:

1. be 55 year of age or older;
2. be determined by the state administering agency to need the level of care required under the state Medicaid plan for coverage of nursing facility services;
3. reside in the service area of the PACE organization; and
4. at the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety.

B. Eligibility to enroll in a PACE program is not restricted to an individual who is either a Medicare beneficiary or Medicaid recipient. A potential PACE enrollee may be, but is not required to be, any or all of the following:

1. entitled to Medicare Part A;
2. enrolled under Medicare Part B; or
3. eligible for Medicaid.

C. Persons shall be considered to have met the criteria for determining that an individual is able to live in a community setting without jeopardizing his or her health or safety when the answer to all of the following questions is determined to be in the affirmative.

1. Does the individual or caregiver have a desire to remain in the community?
2. If the individual is not able to live safely alone, is there a primary caregiver at home, or a willingness to use another caregiver or provider to meet the individual's needs?
3. Can the caregiver maintain a safe physical environment in the home?
4. Are hygiene, nutrition, medical care, and support systems adequate?
5. If behavioral problems exist, can they be managed to prevent risk to self or others?
6. Can the individual who has a history of criminal behavior that poses a risk to self or others be safely maintained at home?
7. Can a plan of care be developed to meet the individual's needs?

D. A PACE organization shall assess the potential participant to ensure that he or she can be cared for appropriately in a community setting and that he or she meets all requirements for PACE eligibility. PACE eligibility decisions are subject to approval by the state administering agency as determined necessary.

E. Reevaluation of Eligibility

1. DHH shall annually reevaluate whether the participant continues to meet level of care for nursing facility services. DHH may permanently waive the annual recertification of level of care requirements for a participant if it determines that there is no reasonable expectation of improvement or significant change in the participant's because of the severity of a chronic condition or the degree of impairment of functional capacity.

2. DHH may determine that a PACE participant who no longer meets the state Medicaid nursing facility level of care requirements may be deemed to continue to be eligible for the PACE program until the next annual reevaluation, if,

in the absence of continued coverage under this program, the participant reasonably would be expected to meet the nursing facility level of care requirement within the next six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§503. Enrollment

A. Enrollment Period

1. A participant's enrollment in the program is effective on the first day of the calendar month following the date the PACE organization receives the signed enrollment agreement.

2. Enrollment continues until the participant's death, regardless of changes in health status, unless either of the following actions occurs:

- a. the participant voluntarily disenrolls; or
- b. the participant is involuntarily disenrolled (see §505.B below).

§505. Disenrollment

A. A PACE organization shall submit proposed denial of enrollment determinations of applicants for health and safety reasons and all involuntary disenrollments of participants to DHH for review prior to notifying applicants/participants of such adverse decisions. DHH shall review denials of PACE enrollment eligibility and disenrollments by the end of the third business day after receipt from the PACE organization to determine whether the PACE organization has adequately documented acceptable grounds. Failure of DHH to provide a decision within this timeframe shall constitute approval of the PACE organization decision. The decision by DHH shall be binding.

B. Involuntary Disenrollment

1. A participant may be involuntarily disenrolled for any of the following reasons:

- a. a participant fails to pay, or to make satisfactory arrangements to pay, any premium due the PACE organization after a 30-day grace period;
- b. the participant engages in disruptive or threatening behavior, as described in Paragraph 2 below;
- c. the participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances;
- d. the participant is determined to no longer meet the State Medicaid nursing facility level of care requirements and is not deemed eligible;
- e. the PACE program agreement with CMS and DHH is not reviewed or is terminated; or
- f. The PACE organization is unable to offer health care services due to the loss of state licenses or contracts with outside providers.

2. The following are behaviors considered disruptive or threatening behavior for purposes of involuntary disenrollment:

- a. behavior that jeopardizes his or her health or safety, or the safety of others; or
- b. consistent refusal to comply with his or her individual plan of care or the terms of the PACE enrollment agreement by a participants with decision-making capacity,

but not if the behavior is related to a mental or physical condition of the participant. Noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Chapter 7. Quality Assessment and Performance Improvement

§701. Organization Responsibilities

A. A PACE organization must develop, implement, maintain, and devalue an effective, data-driven quality assessment and performance improvement program.

B. The program must reflect the full range of services furnished by the PACE organization.

C. A PACE organization must take actions that result in improvements in its performance in all types of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§703. Quality Assessment and Performance Improvement Plan

A. A PACE organization must have a written quality assessment and performance improvement plan.

B. The PACE governing body must review the plan annually and revise it, if necessary.

C. At a minimum, the plan must specify how the PACE organization proposes to meet the following requirements:

1. identify areas to improve or maintain the delivery of services and patient care.

2. develop and implement plans of action to improve or maintain quality of care.

3. document and disseminate to PACE staff and contractors the results from the quality assessment and performance improvement activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§705. Minimum Requirements

A. A PACE organization's quality assessment and performance improvement program must include, but is not limited to, the use of objective measures to demonstrate improved performance with regard to the following:

1. utilization of PACE services, such as decreased inpatient hospitalizations and emergency room visits;

2. caregiver and participant satisfaction;

3. outcome measures that are derived from data collected during assessments, including data on the following:

a. physiological well being.

b. functional status.

c. cognitive ability.

d. social/behavioral functioning.

e. quality of life of participants.

4. effectiveness and safety of staff-provided and contracted services, including the following:

a. competency of clinical staff;

b. promptness of service delivery;

c. achievement of treatment goals and measurable outcomes.

5. nonclinical areas, such as grievances and appeals, transportation services, meals, life safety, and environmental issues.

B. Outcome measures must be based on current clinical practice guidelines and professional practice standards applicable to the care of PACE participants.

C. The PACE organization must meet or exceed minimum levels of performance, established by CMS and the state administering agency, on standardized quality measures, such as influenza immunization rates, which are specified in the PACE program agreement.

D. The PACE organization must ensure that all data used for outcome monitoring are accurate and complete.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§707. Internal Activities

A. A PACE organization must do the following:

1. use a set of outcome measures to identify areas of good or problematic performance;

2. take actions targeted at maintaining or improving care based on outcome measures;

3. incorporate actions resulting in performance improvement into standards of practice for the delivery of care and periodically track performance to ensure that any performance improvements are sustained over time;

4. set priorities for performance improvement, considering prevalence and severity of identified problems, and give priority to improvement activities that affect clinical outcomes;

5. immediately correct any identified problem that directly or potentially threatens the health and safety of a PACE participant.

B. A PACE organization must designate an individual to coordinate and oversee and performance improvement activities.

C. Involvement in quality assessment and performance improvement activities.

1. A PACE organization must ensure that all interdisciplinary team members, PACE staff, and contract providers are involved in the development and implementation of quality assessment and performance improvement activities and are aware of the results of these activities.

2. The quality improvement coordinator must encourage a PACE participant and his or her caregivers to be involved in quality assessment and performance improvement activities, including providing information about their satisfaction with services

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§709. Additional Activities

A. A PACE organization must meet external quality assessment and reporting requirements as specified by CMS or the State administering agency, in accordance with Section 460.202 of the Social Security Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§711. Committees with Community Input

A. A PACE organization must establish one or more committees, with community input, to do the following:

1. evaluate data collected pertaining to quality outcome measures;
2. address the implementation of, and results from, the quality assessment and performance improvement plan;
3. provide input related to ethical decision-making, including end-of-life issues and implementation of the Patient Self-Determination Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Chapter 9. Sanctions

§901. Violations

A. Sanctions may be imposed against a PACE organization if it commits one of the following violations:

1. fails substantially to provide medically necessary items and services to a participant that are covered PACE services, and that failure has adversely affected (or has substantial likelihood of adversely affecting) the participant;
2. involuntarily disenrolls a participant in violation of Section 460.164;
3. discriminates in the enrollment or disenrollment of Medicare beneficiaries or Medicaid recipients, or both, who are eligible to enroll in a PACE program on the basis of an individual's health status or need for health care services;
4. engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment, except as permitted by Section 460.150, by Medicare beneficiaries or Medicaid recipients whose medical condition or history indicates a need for substantial future medical services;
5. imposes charges on participants enrolled under Medicare or Medicaid for premiums in excess of the premiums permitted;
6. misrepresents or falsifies information that is furnished:
 - a. to CMS or the State under this part; or
 - b. to an individual or any other entity under this part;
7. prohibits or otherwise restricts a covered health care professional from advising a participant who is a patient of the professional about the participant's health status, medical care, or treatment for the participant's condition or disease, regardless of whether the PACE program provides

benefits for that care or treatment, if the professional is acting within his or her lawful scope of practice;

8. operates a physician incentive plan that does not meet the requirements of section 1876(i)(8) of the Social Security Act; or

9. employs or contracts with any individual who is excluded from participation in Medicare or Medicaid under Section 1128 or Section 1128A of the Social Security Act (or with any entity that employs or contracts with that individual) for the provision of health care, utilization review, medical social work, or administrative services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

§903. Imposition of Sanctions by CMS

A. CMS may impose the following sanctions for violations specified in §901:

1. suspension of enrollment of Medicare beneficiaries;
2. suspend Medicare payment to the PACE organization;
3. deny payment to the State for medical assistance for services furnished under the PACE program agreement. The state will suspend payments to the PACE organization when payment of the federal portion of PACE reimbursement is denied;
4. impose civil money penalties as specified in federal regulations.

B. CMS or the state may determine that the PACE organization is not in substantial compliance with PACE requirements, and may take one or more of the following actions:

1. condition the continuation of the PACE program agreement upon timely execution of a corrective action plan;
2. withhold some or all payments under the PACE program agreement until the organization corrects the deficiency;
3. terminate the PACE program agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Chapter 11. Appeals

§1101. Participant Rights, Grievances, and Appeals

A. The PACE organization must have a formal written appeals process in accordance with 42 CFR 460.122, with specified timeframes for response, to address noncoverage or nonpayment of a service, and involuntary disenrollment.

B. Additional appeal rights under Medicare or Medicaid are available to the participant if an adverse decision is made in the PACE organization appeal process, or if the participant is involuntarily disenrolled from the PACE program. A PACE organization must inform a participant in writing of additional appeal rights available under Medicare or Medicaid.

C. Medicaid-eligible participants who appeal through Medicaid shall be heard by the DHH Bureau of Appeals within the timeframes applicable to processing Medicaid appeals except in cases where federal PACE requirements

require a more expeditious decision. The PACE organization shall prepare the Summary of Evidence in preparation for the appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Chapter 13. Reimbursement

§1301. Payment

A. Participants shall be eligible for Medicaid payment of the PACE premium on their behalf if they meet the categorically needy income and resource criteria for Medicaid eligibility for nursing facility and Home and Community Based Services waiver services.

B. Participants are eligible for Medicare payment of the PACE premium on their behalf if they are covered by Medicare. The amount of Medicare premiums is calculated by the Centers for Medicare and Medicaid Services, the federal oversight agency.

C. Medicaid payment to a PACE organization on behalf of a Medicaid-eligible participant shall be a prospective monthly capitated amount that is less than the amount that would otherwise have been paid under the State Plan if the participant was not enrolled under the PACE program.

1. Statewide upper payment limits shall be calculated for each state fiscal year using statewide data from actual paid fee-for-service claims for alternative populations who are age 55 or older.

2. Statewide upper payment limits and Medicaid premiums for PACE shall be calculated in accordance with the approved State Plan methodology for such calculation, including trending of historical data. Premiums for every PACE organization in the state will be based on the statewide upper payment limits.

3. During the first two years of operation of a PACE organization, Medicaid premiums shall be 95 percent of the upper payment limits.

4. During the third and fourth years of operation of a PACE organization, Medicaid premiums shall be 90 percent of the upper payment limits.

5. For the fifth and subsequent year of operation of a PACE organization, Medicaid premiums shall be 85 percent of the upper payment limits.

D. There shall be a minimum of two Medicaid upper payment limits calculated annually:

1. one for participants who are eligible for both Medicare and Medicaid; and

2. one for participants who are eligible only for Medicaid.

E. Medicaid payment to a PACE organization shall be made for each Medicaid-eligible participant who is enrolled on the first day of the month.

1. Enrolled participants are those who have signed an enrollment agreement.

2. Medicaid-eligible participants are those who have been determined to be eligible for Medicaid payment effective as of or before the first day of the month, including those who are retroactively eligible, when such date is on or before the first day of the month.

F. The amount of the Medicaid premium is a fixed amount regardless of changes in the participant's health status.

G. A PACE organization may not charge a premium to a participant who is eligible for both Medicare and Medicaid, or who is only eligible for Medicaid.

H. Participants who are not eligible for Medicaid must pay a premium to the PACE organization equal to the amount of the Medicaid premium.

I. Participants who are not eligible for Medicaid and are also not eligible for either Medicare Part A or Medicare Part B must pay a premium to the PACE organization equal to the amount of the Medicaid premium and also amount(s) equal to the Medicare premium for Part A or Part B, or both.

J. A PACE participant who is in a nursing facility reimbursed by PACE on his/her behalf shall be responsible for payment of patient liability.

1. The amount of patient liability is the same amount that would be required to be paid by a Medicaid eligible resident of a nursing facility if he/she was not a participant in a PACE organization.

2. The patient liability obligation begins with the first day of the first full calendar month after the participant is a resident in the nursing facility for 90 consecutive days.

3. The PACE organization shall determine whether the patient liability is to be paid to the PACE organization or the nursing facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Implementation of the provisions 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, 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 Monday, December 29, 2003 at 9:30 a.m. in the Wade O. Martin 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: All Inclusive Care for the Elderly

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 \$44,955 for SFY 2003-2004, \$964,121 for SFY 2004-2005 and

\$1,750,707 for FY 2005-2006. It is anticipated that \$1,564 (\$782 SGF and \$782 FED) will be expended in SFY 2003-2004 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 \$111,821 for SFY 2003-2004, \$2,423,515 for SFY 2004-2005 and \$4,400,757 for SFY 2005-2006. \$782 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule establishes state regulatory and financial conditions relative to operation of Programs of All Inclusive Care for the Elderly (PACE). PACE will provide an additional model for community-based Long Term Care services that will enable elderly individuals to remain in their living arrangement of choice among family and friends. PACE will have approximately 20 participants at inception and will grow to about 200 participants in June 2006. Implementation of this proposed Rule will increase expenditures by \$155,212 for SFY 2003-2004, \$3,387,636 for SFY 2004-2005 and \$6,151,464 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this Rule will have no effect on competition and employment.

Ben A Bearden
Director
0311#082

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**

Durable Medical Equipment Program
Medical Equipment and Supplies Delivery
Termination of Reimbursement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2003-2004 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." 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 provides reimbursement under the Durable Medical Equipment Program for the delivery of medical equipment and supplies. The reimbursement is either the lesser of billed charges or 5 percent of the total shipping amount of the prior authorized

medical equipment and supplies up to a maximum amount of \$50 (*Louisiana Register*, Volume 26, Number 12).

Section 11B of Act 14 of the 2003 Regular Session of the Louisiana Legislature directed the Commissioner of Administration to reduce discretionary state general fund (direct) appropriations contained in the Act by .8 percent across-the-board, or so much thereof more or less as may be necessary, to effect savings of \$17,300,000. The Commissioner of Administration approved this reduction on September 9, 2003. Subsequently, the commissioner directed the department to reduce its discretionary expenditures by .8 percent for state fiscal year 2003-2004. In compliance with Act 14 of the 2003 Regular Session of the Louisiana Legislature, the bureau proposes to terminate reimbursement for the delivery of medical equipment and supplies.

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 terminates reimbursement for the delivery of medical equipment and supplies.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Monday, December 29, 2003 at 9:30 a.m. in the Wade O. Martin 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: Durable Medical Equipment Program
Medical Equipment and Supplies Delivery
Termination of Reimbursement**

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

It is anticipated that implementation of this proposed Rule will result in estimated savings to the state of \$41,117 for SFY 2003-2004, \$157,977 for SFY 2004-2005 and \$162,717 for SFY 2005-2006. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in SFY 2003-04 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that implementation of this proposed rule will reduce federal revenue collections by \$103,512 for SFY 2003-2004, \$397,108 for SFY 2004-2005, and \$409,021 for SFY 2005-2006. \$102 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule terminates reimbursement for the delivery of medical equipment and supplies (approximately 38,000 deliveries per year). It is anticipated that implementation of this proposed Rule will decrease spending on delivery fees (up to \$50 per service) of medical equipment and supplies by \$144,833 for SFY 2003-2004, \$555,085 for SFY 2004-2005, and \$571,738 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition as a result of the implementation of this proposed Rule. This reimbursement reduction could result in staff reduction or decreased participation by providers of durable medical equipment in the Medicaid Program.

Ben A. Bearden
Director
0311#077

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**

**Durable Medical Equipment Program
Motorized Wheelchairs**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 provides coverage and reimbursement for manual and motorized wheelchairs under the Durable Medical Equipment Program. The bureau promulgated an Emergency Rule to adopt new policy governing recipient qualifications for motorized wheelchairs (*Louisiana Register*, Volume 28, Number 9). This Rule is being promulgated to continue the provisions contained in the September 21, 2002 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 implementation of this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will promote the health and welfare of Medicaid recipients by facilitating access to medically necessary motorized wheelchairs and thereby avoiding further deterioration of their physical functioning.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes provisions governing recipient criteria and prior authorization for motorized wheelchairs. In addition, the

bureau amends the August 20, 1998 Rule to clarify the provisions governing the repair of motorized wheelchairs.

Wheelchairs, Motorized and/or Custom Motorized Recipient Criteria

A. Motorized Wheelchairs

1. For purposes of this Rule, the term *motorized* shall have the same meaning as power, electric or any means of propulsion other than manual. A motorized wheelchair must be medically necessary. The recipient must meet all of the following criteria in order to be considered for a motorized wheelchair:

a. the recipient is not functionally ambulatory. Not functionally ambulatory means the recipient's ability to ambulate is limited such that without use of a wheelchair, he/she would otherwise be generally bed or chair confined;

b. the recipient is unable to operate a wheelchair manually due to severe weakness of the upper extremities due to a congenital or acquired neurological or muscular disease/condition or is unable to propel any type of manual wheelchair because of other documented health problems; and

c. the recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use a motorized wheelchair effectively.

B. A motorized wheelchair is covered if the recipient's condition is such that the requirement for a motorized wheelchair is long term (at least six months).

Prior Authorization

A. All wheelchairs and modifications required to meet the needs of a particular recipient are subject to prior authorization. Prior authorization will be made for only one wheelchair at a time. Backup chairs, either motorized or manual, will be denied as not medically necessary. All requests must include:

1. a completed PA -01 form;

2. a physician's prescription for a motorized wheelchair. The physician must specifically state that the prescription is for a motorized wheelchair;

3. medical documentation from a physician is required to support the provisions set forth in the Recipient Criteria Section, Subparagraphs A.1.a-b;

4. a seating evaluation performed, signed and dated by the physical therapist or occupational therapist that performed the seating evaluation. The seating evaluation shall:

a. indicate the appropriateness of the specific wheelchair requested and all modifications and/or attachments to the specific wheelchair and its ability to meet the recipient's long term medical needs. Options that are primarily beneficial in allowing the recipient to perform leisure or recreational activities are not covered;

b. include the dated signature of the physician who prescribed the motorized wheelchair, confirming:

i. the recipient's diagnosis or condition is such that a motorized wheelchair is medically necessary; and

ii. he or she has seen the seating evaluation and motorized wheelchair recommendation;

5. documentation indicating that the recipient is capable of safely operating the controls for a motorized

wheelchair and can adapt to or be trained to use the motorized wheelchair effectively. It is not sufficient for a Medicaid provider of motorized wheelchairs to indicate that a recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use the motorized wheelchair effectively. Such documentation shall include:

a. a signed and dated statement from the recipient's physician, physical therapist or occupational therapist that he or she has determined that the recipient has the cognitive, motor and perceptual abilities needed to safely operate the controls of a motorized wheelchair. This statement shall be verified by the notes and recommendation of the physician, physical therapist or occupational therapist making such statement; and

b. a signed and dated statement from the recipient's physician, physical therapist or occupational therapist that he or she has determined that the recipient can adapt to or be trained to use the motorized wheelchair effectively. This statement shall be verified by the notes and recommendation of the physician, physical therapist or occupational therapist making such statement.

Repairs and Modifications

A. Requests for repairs to motorized wheelchairs will be considered for basic repairs only. Basic repairs are those which are requested to repair an existing component of the recipient's current motorized wheelchair.

B. Requests for modifications or reconstruction of the recipient's current motorized wheelchair shall not be considered basic repairs. Requests for modifications or reconstruction of the recipient's current motorized wheelchair must be submitted in accordance with prior authorization criteria. Modifications or reconstruction will be denied if it is more cost effective to provide a new motorized wheelchair.

C. It is expected that all repairs and modifications of motorized wheelchairs shall be completed within one month, unless there is a justifiable reason for a delay. Rental of a manual wheelchair may be prior authorized on a monthly basis as a temporary replacement, if necessary, when the recipient's motorized wheelchair is being repaired or modified.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, December 29, 2003 at 9:30 a.m. in the Wade O. Martin 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: Durable Medical Equipment Program Motorized Wheelchairs

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 \$85,848 for SFY 2002-2003, \$112,364 for SFY 2003-2004 and \$115,489 for SFY 2004-2005. It is anticipated that \$476 (\$238 SGF and \$238 FED) will be expended in SFY 2003-2004 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 \$210,590 for SFY 2002-2003, \$282,088 for SFY 2003-2004 and \$290,306 for SFY 2004-2005. It is anticipated that \$238 will be expended in SFY 2003-2004 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

This Rule is being promulgated to continue the provisions contained in the September 21, 2002 emergency rule, which adopted new policy governing recipient qualifications for motorized wheelchairs. It is anticipated that the implementation of this proposed rule will promote the health and welfare of Medicaid recipients (approximately 51 per year) by facilitating access to medically necessary motorized wheelchairs and thereby avoiding further deterioration of their physical functioning. It is anticipated that the implementation of this proposed Rule will increase payments to providers of motorized wheelchairs by approximately \$296,438 for SFY 2002-2003, \$393,976 for SFY 2003-2004 and \$405,795 for SFY 2004-2005.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment.

Ben A. Bearden
Director
0311#078

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Early and Periodic Screening,
Diagnosis and Treatment Program
Dental Services? Reimbursement
(LAC 50:XV.6903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 50:XV.6903 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 provides reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) dental services under the Medicaid Program. Reimbursement for these services is a flat fee established by the bureau minus the amount that any third party coverage would pay. In the 2002 Regular Session the Legislature allocated additional funds allowing the Bureau to increase the reimbursement rates for certain designated dental procedures (*Louisiana Register*, Volume 28, Number 12). As a result of the allocation of additional funds by the Legislature during the 2003 Regular Session, the bureau again increased the reimbursement fees for certain dental procedures (*Louisiana Register*, Volume 29, Number 7).

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is required to implement these codes and definitions or face monetary sanctions. In compliance with HIPAA requirements, the bureau clarified the descriptions for two Early and Periodic Screening, Diagnosis and Treatment (EPSDT) dental procedure codes and adjusted the reimbursement rates to conform to the HIPAA compliant procedure code descriptions (*Louisiana Register*, Volume 29, Number 2). The bureau promulgates the following Rule to continue the provisions contained in the February 21, 2003 and August 1, 2003 emergency rules.

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

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment Program

Chapter 69. Dental Services

§6903. Reimbursement

A. Reimbursement fees are increased as follows for certain designated procedure codes. The procedure codes have been amended to comply with the Health Insurance Portability and Accountability Act.

Procedure Code	Description	Fee
D0120	Periodic Oral Exam	\$18
D0150	Comprehensive Oral Exam	\$20
D0220	Radiograph-Periapical-First Film	***
D0230	Radiograph-Periapical-Each Additional Film	***
D0272	Radiograph-Bitewing-Two Films	***
D1110	Adult Prophylaxis	\$29
D1120	Child Prophylaxis	***
D1351	Sealant-Per Tooth	\$17
D1510	Space Maintainer-Unilateral	\$95
D1515	Space Maintainer-Bilateral	\$177
D2140	Amalgam-One Surface, Primary or Permanent	***

D2150	Amalgam-Two Surface, Primary or Permanent	***
D2160	Amalgam-Three Surface, Primary or Permanent	***
D2161	Amalgam-Four or more Surface, Permanent	\$88
D2330	Resin-based Composites-One Surface	***
D2331	Resin-based Composites-Two Surface	***
D2332	Resin-based Composites-Three Surface	***
D2335	Resin-based Composites-4 or More Surfaces, Anterior	\$88
D2390	Resin-based Composite Crown, Anterior	\$88
D2930	Stainless Steel Crown, Primary	\$88
D2931	Stainless Steel Crown, Permanent	\$88
D2932	Prefabricated Resin Crown	\$84
D2950	Core Buildup, including any pins	\$55
D2954	Prefabricated Post and Core in addition to crown	\$75
D3220	Pulpotomy-Deciduous Tooth Only	***
D3310	Root Canal-One Canal	***
D3320	Root Canal-Two Canals	***
D3330	Root Canal-Three Canals	***
D4341	Periodontal Scaling and Root Planning	\$75
D4355	Full Mouth Debridement	\$58
D5110	Complete Denture, Maxillary	\$495
D5120	Complete Denture, Mandibular	\$495
D5130	Immediate Complete Denture, Maxillary	\$495
D5140	Immediate Complete Denture, Mandibular	\$495
D5211	Partial Denture, Resin Base, Maxillary	\$470
D5212	Partial Denture, Resin Base, Mandibular	\$470
D5510	Repair Complete Broken Denture Base	\$100
D5520	Repair Missing or Broken Teeth-Complete Denture, Per Tooth	\$52/\$26*
D5610	Repair Resin Denture Base, Partial Denture	\$100
D5630	Repair or Replace Broken Clasp, Partial Denture	\$95
D5640	Replace Broken Teeth, Partial Denture, Per Tooth	\$52/\$26*
D5650	Add Tooth to Existing Partial Denture	\$52/\$26*
D5660	Add Clasp to Existing Partial Denture	\$95
D5750	Reline Complete Denture, Maxillary (Lab)	\$238
D5751	Reline Complete Denture, Mandibular (Lab)	\$238
D5760	Reline Partial Denture, Maxillary (Lab)	\$208
D5761	Reline Partial Denture, Mandibular (Lab)	\$208
D5820	Interim Partial Denture, Maxillary	\$300
D5821	Interim Partial Denture, Mandibular	\$300
D7140	Extraction, Erupted Tooth or Exposed Root	***
D7210	Surgical Extraction	***
D7220	Removal of Impacted Tooth, Soft Tissue	\$86
D7230	Removal of Impacted Tooth, Partially Bony	\$136
D7240	Removal of Impacted Tooth, Completely Bony	\$161
D7241	Removal of Impacted Tooth, Completely Bony with Unusual Surgical Complications	\$186
D8050	Interceptive Orthodontic Treatment, Primary Dentition	\$350**
D8060	Interceptive Orthodontic Treatment, Transitional Dentition	\$350**
D8070	Comprehensive Orthodontic Treatment, Transitional Dentition	\$3,600**
D8080	Comprehensive Orthodontic Treatment, Adolescent Dentition	\$3,600**
D8090	Comprehensive Orthodontic Treatment, Adult Dentition	\$3,600**
D9110	Palliative (emergency) Dental Pain Treatment	\$25
D9241	Intravenous Conscious Sedation/Analgesia-First 30 Minutes	\$94

* Rate for each subsequent tooth in the same arch

** Manually-priced maximum fee

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 29:176 (February 2003), amended LR 30:

NOTICE OF INTENT

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

Early and Periodic Screening, Diagnosis
and Treatment Program? Personal Care and Extended
and/or Multiple Daily Skilled Nursing Services
(LAC 50:XV.7305, 7307, 7311, and 7501)

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, December 29, 2003 at 9:30 a.m. in the Wade O. Martin 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: **Early and Periodic Screening, Diagnosis and Treatment Program? Dental Services? Reimbursement**

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 \$32 for SFY 2002-2003, \$444,614 for SFY 2003-2004 and \$549,332 for FY 2004-2005. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in SFY 2003-2004 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 \$79 for SFY 2002-2003, \$1,117,369 for SFY 2003-2004 and \$1,380,858 for SFY 2004-2005. \$170 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule, which continues the emergency rules of February 21, 2003 and August 1, 2003, will increase the reimbursement rate for certain designated procedure codes (approximately 44 codes) in the Early Periodic Screening, Diagnosis and Treatment (EPSDT) Dental Program and amends codes and descriptions to comply with the Health Insurance Portability and Accountability Act (HIPAA). It is anticipated that implementation of this proposed rule will increase expenditures for EPSDT dental services by \$111 for SFY 2002-2003, \$1,561,643 for SFY 2003-2004 and \$1,930,190 for SFY 2004-2005.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Ben A. Bearden
Director
0311#079

H. Gordon Monk
Staff Director
Legislative Fiscal Office

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.7305, 7307, and 7311 and adopt LAC 50:XV.Chapter 75 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 hereby proposes to amend the February 20, 2003 Rule to clarify certain provisions governing personal care services covered under the Early Periodic Screening, Diagnosis and Treatment Program. The bureau also proposes to repromulgate and clarify the criteria governing extended and/or multiple daily skilled nursing visits addressed in the March 20, 1996 Rule on home health services for codification purposes.

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 by facilitating access to services as a result of clarifying the provisions governing covered services.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 73. Personal Care Services

§7305. Recipient Qualifications

A. - A.3. ...

4. A parent or other caregiver must be in the home with an EPSDT eligible 14 years of age or younger. Recipients over 14 years of age must be mentally and intellectually competent to direct their own care if they are to be left with the PCS worker without the presence of a parent or other caregiver.

5. Early and Periodic Screening, Diagnosis, and Treatment personal care services must be prescribed by the recipient's attending physician initially and every 180 days thereafter (or rolling 6 months), and when changes in the plan of care occur. The plan of care shall be acceptable for submission to BHSF only after the physician signs and dates the completed form. The physician's signature must be an original signature and not a rubber stamp.

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 29:177 (February 2003), amended LR 30:

§7307. Prior Authorization

A. - D. ...

E. Recipients who have been designated by DHH as chronic needs cases are exempt from the standard prior authorization process. Although a new request for prior authorization must still be submitted every 180 days, the provider shall only be required to submit a PA request form accompanied by a statement from a physician verifying that the recipient's condition has not improved and the services currently approved must be continued. Only DHH or its designee can grant the designation of a chronic needs case to a recipient.

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 29:177 (February 2003), amended LR 30:

§7311. Service Limits

A. EPSDT personal care services are not subject to service limits. The units of service approved shall be based on the physical requirements of the recipient and medical necessity for the covered services in the EPSDT-PCS Program.

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 29:178 (February 2003), amended LR 30:

Chapter 75. Extended and/or Multiple Daily Skilled Nursing

§7501. Medically Fragile

A. A medically fragile individual is one who has a medically complex condition characterized by multiple, significant medical problems that require extended care. Medically fragile individuals require most or all of the following services/aids:

1. use of home monitoring equipment;
2. IV therapy;
3. ventilator or tracheotomy care;
4. feeding tube and nutritional support;
5. frequent respiratory care;
6. medication administration;
7. catheter care;
8. frequent positioning needs;
9. special accommodations such as specially equipped vehicles or medical devices in order to attend school.

B. Under the EPSDT Program, continuous nursing care by a registered nurse (RN) or a licensed practical nurse (LPN) may be provided to children up to age 21 who are considered "medically fragile." Children who meet the continuous care criteria, which must be prior authorized, may leave the home and have the nurse provide services in any setting other than a school or institutions such as a hospital, skilled nursing facility or intermediate care facility for the mentally retarded.

C. Medically fragile recipients meet the medical necessity criteria for home health services if the individual has received prior authorization for multiple daily home visits and/or extended skilled nursing visits in accordance with the certifying physician's orders that document and meet the following criteria:

1. the medical condition of the recipient meets the medical necessity requirement for skilled nursing services and the provision of these services in the home is the most appropriate level of medical care; and

2. failure to receive skilled nursing services in the home would place the recipient at risk of developing additional medical problems or could cause further debilitation; and

3. the recipient requires skilled nursing services on a regular basis and that these services cannot be obtained in an outpatient setting before or after normal school hours. Therefore, home health services may be provided to the recipient/student in the home before or after normal school hours.

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 30:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, December 29, 2003 at 9:30 a.m. in the Wade O. Martin 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: Early and Periodic Screening, Diagnosis and Treatment Program? Personal Care and Extended and/or Multiple Daily 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 have no programmatic fiscal impact for SFY 2003-2004, 2004-2005 and 2005-2006. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in SFY 2003-2004 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 not impact federal revenue collections for SFY 2003-2004, 2004-2005 and 2005-2006. It is anticipated that \$204 will be expended in SFY 2003-2004 for the federal expense for promulgation of this proposed rule and the final rule.

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

Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups. The proposed rule clarifies designated provisions for personal care services under the Early Periodic Screening, Diagnosis and Treatment Program (approximately 1,000 recipients receiving services). The proposed rule also repromulgates and clarifies the criteria governing extended and/or multiple daily skilled nursing services addressed in the March 20, 1996 rule on home health services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0311#080

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**

**Mental Health Rehabilitation? Accreditation
(LAC 50:XV.505)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.505 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, effective June 20, 1996 (*Louisiana Register*, Volume 22, Number 6), that restructured the Mental Health Rehabilitation (MHR) Program and established provisions governing recipient eligibility, service delivery requirements and reimbursement methodology. The June 20, 1996 Rule was amended to revise provider participation requirements by establishing enrollment and certification criteria (*Louisiana Register*, Volume 24, Number 7).

Act 246 of the 2003 Regular Session of the Legislature provided for the mandatory accreditation of providers of mental health rehabilitation services by an accreditation body. In compliance with Act 246, the bureau now proposes to amend the July 20, 1998 Rule to revise provisions governing provider participation and the accreditation of mental health rehabilitation agencies.

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 July 20, 1998 Rule to revise provisions governing provider participation and the accreditation of mental health rehabilitation agencies.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 5. Providers

Subchapter A. Provider Participation

§505. Accreditation

A. Currently enrolled and prospective providers of mental health rehabilitation services shall be accredited by a national accreditation organization. The department shall only accept accreditation from the following national organizations for the purposes of enrolling a provider into the Mental Health Rehabilitation (MHR) Program:

1. the Council on Accreditation (COA);
2. the Commission on Accreditation of Rehabilitation Facilities (CARF); or
3. the Joint Committee on Accreditation of Healthcare Organizations (JCAHO).

B. By July 1, 2004, all current providers shall provide the department with written documentation which identifies which national accreditation organization will be pursued. Current providers shall provide documentation of accreditation prior to December 31, 2005 as a condition of ongoing enrollment as a MHR provider. Prospective providers shall meet the established provider participation requirements. In addition, prospective providers shall be required to submit proof of a request for accreditation from a national accreditation organization within six months of enrollment in the MHR program and must be fully accredited within twenty four months of submitting the application for enrollment. Providers that do not submit such proof or are not accredited within 24 months shall be immediately terminated from the MHR program.

C. All enrolled providers of mental health rehabilitation services shall maintain accreditation from one of the national organizations listed Subsections A.1.-3 above. Any change in accreditation status shall be reported to the department by the provider. The provider shall provide written notification to the department within five working days of receiving said notice from the national accreditation organization. The written notification shall include information on the changed status and the steps the accreditation organization is requiring from that provider to obtain or maintain accreditation.

D. Denial, loss or change in accreditation status may result in sanctions to the mental health rehabilitation agency.

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 30:

Interested persons may submit written comments to Ben A. Bearden at the following address: Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, December 29, 2003 at 9:30 am 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: Mental Health
Rehabilitation? Accreditation**

**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 impact to the state general fund other than the cost of promulgation for SFY 2003-2004. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in SFY 2003-2004 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 not affect federal revenue collections other than the federal share of the promulgation costs for SFY 2003-2004. It is anticipated that \$136 will be expended in SFY 2003-2004 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

This Rule proposes to revise the provisions governing provider participation and the accreditation of Mental Health Rehabilitation agencies (approximately 130 enrolled providers). It is anticipated that implementation of this proposed Rule will have no economic costs or benefits for recipients or mental health rehabilitation agencies.

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

This Rule has no known impact on competition and employment.

Ben A. Bearden
Director
0311#081

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**

Public Hospitals
Reimbursement Methodology
Upper Payment Limit

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 July of 1983 which established a reimbursement

methodology for inpatient services provided in acute care hospitals (*Louisiana Register, Volume 9, Number 7*). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles with a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 30, 1981 through September 29, 1982. In a Rule adopted in October of 1984 (*Louisiana Register, Volume 10, Number 10*), separate per diem limitations were established for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation. A Rule was adopted in October 1992, which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services.

In compliance with House Bill 1 of the 2003 Louisiana Legislative Session, the bureau promulgated an emergency rule to amend the reimbursement methodology for public hospitals to utilize the upper payment limit for state government-owned or operated hospitals as set forth in the 42 CFR §447.272(b) and §447.321(b) (*Louisiana Register, Volume 29, Number 7*). 42 CFR §447.272(b) and §447.321(b) states as follows: "General Rules: (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter." The bureau now proposes to promulgate a Rule to continue the provisions contained in the July 3, 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 will utilize the upper payment limit for state government-owned or operated hospitals as set forth in the 42 CFR §447.272(b) and §447.321(b). The hospital payment differential for any year shall be the difference between the upper limit of aggregate payments to state government-owned or operated hospitals, as defined in the 42 CFR §447.272(a)(1) and §447.321(a)(1), and the aggregate Medicaid reimbursement paid to these hospitals for the year.

Implementation of the provisions 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, 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 Monday, December 29, 2003 at 9:30 a.m. in the Wade O. Martin 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: Public Hospitals? Reimbursement
Methodology? Upper Payment Limit**

**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 \$9,908,844 for SFY 2003-2004, \$10,205,969 for SFY 2004-2005 and \$10,512,148 for SFY 2005-2006. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in SFY 2003-2004 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 \$24,907,688 for SFY 2003-2004 and \$25,654,779 for SFY 2004-2005 and \$26,424,422 for SFY 2005-2006. \$136 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend the reimbursement methodology for public hospitals (operated by LSUHSCSD and LSUHSC) that would allow Medicaid to establish payments based on the Medicare Upper Payment Limit. It is anticipated that implementation of this proposed rule will increase payments to public hospitals by \$34,816,260 for SFY 2003-2004 and \$35,860,748 for SFY 2004-2005 and \$36,936,570 for SFY 2005-2006.

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

It is anticipated that there will be no effect on competition or employment as a result of the implementation of this proposed rule.

Ben A. Bearden
Director
0311#083

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

**Forfeiture of Good Time for Escape or Battery
(LAC 22:I.333, 359, and 365)**

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:823, and the Administrative Procedures Act, R.S. 49:950 et seq., hereby gives notice of its intent to repeal LAC 22:I.333, Forfeiture of Good Time for Escape or Battery on an Employee of the Department, in its entirety and to amend the

Disciplinary Rules and Procedures for Adult Inmates, LAC 22:I.341-365, to incorporate attempted escape, simple escape and aggravated escape as disciplinary offenses and to provide for the penalties for infractions of these Rules.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter A. General

**§333. Forfeiture of Good Time for Escape or Battery
on an Employee of the Department**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:571.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:1875 (October 1999), repealed LR 30:

**Subchapter B. Disciplinary Rules and Procedures for
Adult Inmates**

**§359. Penalty Schedule-Disciplinary Report (Heard by
Disciplinary Board)**

A. - A.2.e. ...

f. forfeiture of good time

i. attempted escape (simple or aggravated)? up to a maximum of 180 days for each violation

ii. escape (simple or aggravated)? up to a maximum of all good time earned on that portion of the sentence served prior to the escape

iii. for all other violations, up to a maximum of 180 days for each violation.

g. - m. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:418 (March 2001), amended LR 28:94 (January 2002), repromulgated LR 28:1797 (August 2002), amended LR 30:

§365. Disciplinary Rules

A. - H. ...

I. Escape or attempt to escape (Schedule B):

1. attempted escape? the attempt to commit an aggravated or simple escape as defined herein

2. simple escape? the intentional, unauthorized departure of an inmate, under circumstances in which human life was not endangered, from the grounds of an institution, a designated area or place within an institution, the custody of corrections' personnel while off the grounds of an institution, the custody of any law enforcement officer, or the departure of a work release inmate from the designated area where he is legally confined; the failure of an inmate participating in a work release program to report or return from his planned employment or other activity at the appointed time; or the failure of an inmate on furlough to return to his place of confinement at the appointed time.

3. aggravated escape? the intentional, unauthorized departure of an inmate, under circumstances in which human life was endangered, from the grounds of an institution, a designated area or place within an institution, the custody of

corrections' personnel while off the grounds of an institution, the custody of any law enforcement officer, or the departure of a work release inmate from the designated area where he is legally confined; the failure of an inmate participating in a work release program to report or return from his planned employment or other activity at the appointed time; or the failure of an inmate on furlough to return to his place of confinement at the appointed time. For the purpose of this regulation, the commission of a crime while on escape constitutes aggravated escape.

J. - Y.23. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94 USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Adult Services, LR 27:419 (March 2001), amended LR 30:

Family Impact Statement

In accordance with the Administrative Procedures Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Repeal of LAC 22:I.333, forfeiture of good time for escape or battery on an employee of the department, and amending LAC 22:I.359 and 365, disciplinary rules and procedures for adult inmates, to incorporate attempted escape, simple escape and aggravated escape as disciplinary offenses and to provide for the penalties for infractions of these proposed Rules will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed Rule amendment.

Interested persons may submit written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Corrections Services, 504 Mayflower Street, Baton Rouge, LA 70802, or by facsimile to (225) 342-3095. All comments must be submitted by 4:30 p.m., December 20, 2003.

Richard L. Stalder
Secretary

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

**RULE TITLE: Forfeiture of Good Time
for Escape or Battery**

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

The minor amendments to the current Rule and repeal of LAC 22:I.333 will not result in any implementation costs or savings to state or local government units.

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

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

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

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

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

There is no anticipated impact on competition and employment.

Robert B. Barbor
General Counsel
0311#046

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of State Police**

Collection, Submission, Receipt, Identification,
Storage and Disposal of DNA Samples
(LAC 55:I.2703, 2725, and 2740-2747)

Pursuant to R.S. 15:601 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 Department of Public Safety and Corrections, Public Safety Services, Office of State Police intends to amend LAC 55:I.Chapter 27. Notice is further given that the department intends to promulgate the following rules and regulations which establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for arrestees as defined in R.S. 15:601 et seq. and for peace officers as defined in R.S. 40:2405.4 et seq.

Title 55

PUBLIC SAFETY

Part I. State Police

**Chapter 27. Collection, Submission, Receipt,
Identification, Storage and Disposal of
DNA Samples**

Subchapter A. Collection of DNA Samples

**§2703. Collection, Submission, and Identification of
DNA Samples for Convicted Offenders**

A. All DNA samples obtained for DNA Analysis from a convicted offender shall be collected using an approved Louisiana State Police Crime Laboratory DNA Database Collection kit as supplied by the Department.

1 - 5.i. ...

j. In the event a convicted offender resists the taking of the DNA sample and the collector must use reasonable force in accordance with R.S. 15:601-620, the collector may collect any type of biological sample approved by the Louisiana State Police Crime Laboratory. The following types of biological sample collections are hereby approved for these instances:

- i. blood stain from finger prick on FTA card;
- ii. buccal swab;
- iii. phlebotomy draw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:206

(February 2001), repromulgated LR 27:1702 (October 2001), amended LR 30:

Subchapter B. Arrestees

§2725. Record Keeping of DNA Samples for Arrestees

A. The individual who collects each DNA sample shall provide an accurate, up-to-date list of every DNA sample collected each day of collection. Any failed attempts to collect a sample from an arrestee and the reason for the failure (e.g. refusal of arrestee to submit) shall also be indicated. The list will include the following information: the kit number, the arrestee's name, the name of the person collecting the sample and the submitting agency together with any additional data which the Director deems necessary. This information shall be forwarded on an audit form provided by the department to the CODIS DNA Unit on a daily basis, via U.S. mail. If the mailing envelopes are hand delivered to the Crime Laboratory, the audit form shall accompany the mailing envelopes being delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:2370 (November 2002), amended LR 30:

Subchapter C. Peace Officers

§2740. Scope, Purpose and Application

A. Scope, Purpose, and Application. To provide rules and regulations governing the collection, submission, receipt, identification, storage and/or disposal of DNA samples for peace officers pursuant to R.S. 40:2405.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:

§2741. Definitions

Biological Sample? biological evidence of any nature that is utilized to conduct DNA analysis.

Crime Laboratory? Louisiana State Police *Crime Laboratory* of the *Department* of Public Safety and Corrections, Public Safety Services.

Department? *Department* of Public Safety and Corrections, Public Safety Services.

Director? the *Director* of the Louisiana State Police *Crime Laboratory*.

DNA? deoxyribonucleic acid.

DNA Analysis? DNA typing tests that generate numerical identification information and are obtained from a DNA sample.

DPS and C? Department of Public Safety and Corrections.

Peace Officer? same meaning as R.S. 40:2402.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:

§2742. Collection of DNA Samples for Peace Officers

A. All biological samples obtained for DNA Analysis from a peace officer shall be buccal swabs and shall be collected using sterile cotton tip swabs as provided by the agency employing the peace officer who is required to have his biological sample collected pursuant to R.S. 40:2405.4.

1. The agency employing the peace officer shall provide all materials necessary to collect a biological sample from any peace officer required to provide a sample pursuant to R.S. 40:2405.4.

2. The supplies necessary to collect a buccal swab shall include the following:

- a. one pack of two sterile cotton tip swabs;
- b. one pair of gloves;
- c. one paper type envelope to store the samples once collected;
- d. evidence tape for sealing the paper envelope.

3. In order to collect the biological sample, the collector shall adhere to the following procedures.

a. Have the subject open his or her mouth. If there is foreign matter in the mouth, such as tobacco or gum, have the subject rinse his or her mouth out with water.

b. Remove one sterile cotton swab and collect the specimen by rubbing the swab vigorously on the inside surfaces of the cheeks and gums thoroughly. While slowly turning the swab (so that all sides of the swab are in contact with the side of the cheek) rub the swab up and down and back and forth in the mouth about 10 times.

c. Allow the buccal swab to dry for at least 30 minutes.

d. After allowing the buccal swab to dry for at least thirty minutes. Place the buccal swab in the paper type envelope. Do not place the swab back into the original sterile swab packaging.

e. Repeat Subparagraph b with the remaining swab.

f. Place the second cotton tip swab immediately inside the paper type envelope with the first swab.

g. Seal the paper type envelope. Place evidence seal over envelope seal. Write the date and collector's initials partially on the paper type envelope and partially on the evidence seal.

4. The collector shall print the name of the peace officer, the date of collection and the name of the collector on the paper type envelope used to store the samples once collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:

§2743. Storage of Biological Samples

A. All agencies employing any peace officer required to provide a biological sample pursuant to R.S. 40:2405.4 shall be responsible for storing said samples in a secure location. All agencies shall ensure that no unauthorized access to any biological sample taken from any peace officer is permitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:

§2745. Disposition of Biological Samples Following Termination Peace Officer Employment

A. If the employment of a peace officer who is required to have a DNA sample collected pursuant to R.S. 40:2405.4 terminates for any reason, the law enforcement agency that collected the sample may destroy the buccal swab or return it to the peace officer from whom the sample was collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:

§2747. Severability

A. If any article, section, subsection, sentence, clause or phrase of LAC 55:I:2320 et seq. is for any reason

determined to be unconstitutional, contrary to statute, in excess of authority, or otherwise inoperative, such determination shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of LAC 55:I:2701 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:

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 the behavior and personal responsibility of children. These Rules will have no effect on the behavior and personal responsibility of children.

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 no effect on the ability of the family to perform the function as contained in the proposed Rules as families are not required to collect DNA samples from peace officers. These Rules may have an effect on local governments as local governments will be required to collect the samples from peace officers for which a DNA sample is required and may be required to have their employees trained to collect DNA samples. Any such training will be supplied by the Louisiana State Police Crime Laboratory.

The Superintendent of the Office of State Police will consider comments and public input for a period of 35 days following publication. All comments should be directed to Tammy Pruet Northrup, Post Office Box 66614, Mailstop #17, Baton Rouge, LA 70896, 225-925-6216 (phone) 225-925-6217 (facsimile). A tentative public meeting on these Rules is currently scheduled for 10:00 a.m., Wednesday, December 17, 2003, at the Louisiana State Police Crime Laboratory Conference Room located at 376 East Airport Drive, Baton Rouge, LA 70806. Please call to confirm the date, time and location if you plan to attend.

Christopher A. Keaton
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Collection, Submission, Receipt, Identification, Storage and Disposal of DNA Samples

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

There should be no savings to the department. The proposed new Rules are necessary as a result of the passage of Act No. 894 of the 2003 Regular Legislative Session which requires promulgation of policies and procedures to collect biological samples from peace officers hired after August 15, 2003. The only implementation costs for these types of collections will be the costs of the DNA collections kits. Pursuant to these Rules, the costs of these kits will be absorbed by the law enforcement agency that employs the peace officer who is required to provide a biological sample pursuant to Act No. 894 of the 2003 Regular Legislative Session. The estimated costs of the collection kit is \$1.05 per kit.

The enactment of LAC Part I, Ch. 27(C) is necessary to establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for peace officers as defined in R.S. 40:2405.4.

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

There should be no effect on revenue collections of the state as these Rules only establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for peace officers as defined in R.S. 40:2405.4. The commencing of sampling peace officers for DNA samples will not raise revenue. There should be no effect on revenue collections of local governments as the commencing of sampling peace officers for DNA samples will not raise revenue for local governments.

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

There should be no effect on revenue collections of the state as these Rules only establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples in R.S. 40:2405.4. There will be no costs to peace officers who will provide the samples in accordance with law and no non-governmental group will be affected by this program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment. The proposed new Rules initiate collections of DNA samples from peace officers as defined in R.S. 40:2405.4. Persons currently employed by the local governments and state agencies required to collect these samples will be the persons collecting these samples.

Christopher A. Keaton
Undersecretary
0311#065

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Transportation and Development
Office of Weights and Measures**

**Minimum Standards for Reflectivity of Work-Site Materials
(LAC 73:III.Chapter 3)**

In accordance with the applicable provisions of the Administrative Procedure Act, R. S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend Chapter 3 entitled "Minimum Standards for Reflectivity of Work-Site Materials," in accordance with the provisions of R.S. 48:35.

Title 73

WEIGHTS, MEASURES, AND STANDARDS

Part III. Weights and Standards

Chapter 3. Minimum Standards for Reflectivity of Work-Site Materials

§301. Minimum Standards for Reflective Sign Sheeting

A. Reflective sheeting shall be one of the following types as specified on the plans and complying with ASTM D 4956 except as modified herein. The sheeting shall be an approved product listed in QPL 13.

1. Type I. A medium-intensity retroreflective sheeting referred to as "engineering grade" and typically enclosed lens glass-bead sheeting.

2. Type II. A medium-high-intensity retroreflective sheeting sometimes referred to as "super engineering grade" and typically enclosed lens glass-bead sheeting.

3. Type III. A high-intensity retroreflective sheeting, that is typically encapsulated glass-bead retroreflective material.

4. Type VI. An elastomeric-high-intensity retro-reflective sheeting without adhesive. This sheeting is typically a vinyl microprismatic retroreflective material.

5. DOTD Type VII (Fluorescent Orange). A super-intensity retroreflective sheeting, that is typically an unmetallized microprismatic retroreflective element material.

6. Type IX. A very high-intensity retroreflective sheeting having highest retroreflectivity at short distances as determined by the R_A values at 1° observation angle. This sheeting is typically an unmetallized microprismatic retroreflective element material.

B. Adhesive Classes. The adhesive required for retroreflective sheeting shall be Class 1 (pressure sensitive) or Class 2 (heat activated) as specified in ASTM D 4956.

C. Identification Marks. Type II sheeting shall be distinguished by integral identification marks that cannot be removed or affected by physical or chemical methods without causing damage to the sheeting. The markings shall be inconspicuously placed on 12-inch (300-mm) centers and shall be visible from a distance of not more than 3 feet (1.0 m).

D. Alternate Sheeting Type. DOTD Type VII (Fluorescent Orange). Minimum Coefficients of Retroreflection shall be as specified in Table 1015-1. Luminance factors and color requirements shall be as specified in Table 1015-2.

Table 1015-1 Coefficients of Retroreflection for DOTD Type VII (Fluorescent Orange) Sheeting¹

Observation Angle, degrees	Entrance Angle, degrees	Fluorescent Orange
0.2	-4	180
0.2	+30	90
0.5	-4	72
0.5	+30	36

¹Minimum Coefficient of Retroreflection (R_A) ($cd\ lx^{-1}m^{-2}$)

Table 1015-2 Fluorescent Orange Color Specification Limits (Daytime)

Color	1		2		3		4		Luminance Factor, min.
	x	y	x	y	x	y	x	y	Y%
Fluor. Orange	0.583	0.416	0.535	0.400	0.595	0.351	0.645	0.355	25

our pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant D65.)

E. Accelerated Weathering. Reflective sheeting, when processed, applied and cleaned in accordance with the manufacturer's recommendations shall perform in accordance with the accelerated weathering standards in Table 1015-3.

Table 1015-3 Accelerated Weathering Standards²

Type	Retroreflectivity ¹				Colorfastness ³	
	Orange		All Colors, except Orange		Orange	All Colors, except Orange
I	Not used		2 years	504	Not used	2 Years
II	1 Year	655	Not used		1 Year	3 Years
III	1 Year	806	3 Years	806	1 Year	3 Years
III (for drums)	1 Year	806	1 Year	806	1 Year	1 Year
VI	1/2 Year	507	1/2 Year	507	1/2 Year	1/2 Year
DOTD Type VII (Fluor. Orange)	1 Year	808	Not Used		1 Year	Not used
IX	Not used		3 Years	809	Not used	3 Years

¹Percent retained retroreflectivity of referenced table after the outdoor test exposure time specified.

²At an angle of 45° from the horizontal and facing south in accordance with ASTM G7.

³Colors shall conform to the color specification limits of ASTM D4956 and Table 1015-2 herein after the outdoor test exposure time specified.

⁴ASTM D4956, Table 4.

⁵ASTM D4956, Table 6.

⁶ASTM D4956, Table 7.

⁷ASTM D4956, Table 12.

⁸Table 1015-1.

⁹ASTM D4956, Table 3.

F. Performance. Reflective sheeting for signs, when processed, applied and cleaned in accordance with the manufacturer's recommendations shall perform outdoors in accordance with the performance standards in Table 1015-4.

Table 1015-4 Reflective Sheeting Performance Standards

Type	Retroreflectivity ¹ -- Durability ²		Colorfastness ³	
	Orange	All Colors, except Orange		
I	Not used		7 years	50 ⁴
II	3 Years	65 ⁵	Not used	
III	3 Years	80 ⁶	10 Years	80 ⁶
DOTD Type VII (Fluor. Orange)	3 Years	80 ⁷	Not Used	
IX	Not used		7 Years	80 ⁸

¹Percent retained retroreflectivity of referenced table after installation and the field exposure time specified.

²All sheeting shall maintain its structural integrity, adhesion and functionality after installation and the field exposure time specified.

³All colors shall conform to the color specification limits of ASTM D4956 and Table 1015-2 herein after in stallation and the field exposure time specified.

⁴ASTM D4956, Table 4.

⁵ASTM D4956, Table 6.

⁶ASTM D4956, Table 7.

⁷Table 1015-1.

⁸ASTM D4956, Table 3.

G Temporary Signs, Barricades, Channelizing Devices, Drums and Cones. Reflective sheeting for temporary signs, barricades and channelizing devices, shall meet the requirements of ASTM D 4956, Type III except that the initial sequence of temporary advanced warning construction signs used on the mainline of freeways and expressways shall meet the requirements of DOTD Type VII (Fluorescent Orange).

1. Reflective sheeting for vertical panels shall meet the requirements of ASTM D 4956, Type III.

2. Reflective sheeting for drums shall be a minimum of 6 inches (150 mm) wide and shall meet the requirements of ASTM D 4956, Type III, and the Supplementary Requirement S2 for Reboundable Sheeting as specified in ASTM D 4956. Reflective sheeting for traffic cone collars shall meet the requirements of ASTM D 4956, Type VI.

H. Sheeting Guaranty. The contractor shall provide the Department with a guaranty from the sheeting manufacturer stating that if the retroreflective sheeting fails to comply with the performance requirements of this subsection, the sheeting manufacturer shall do the following:

Table 1015-5 Manufacturer's Guaranty - Reflective Sheeting

Type	Manufacturer shall restore the sign face in its field location to its original effectiveness at no cost to the Department if failure occurs during the time period ¹ specified below.		Manufacturer shall replace the sheeting required to restore the sign face to its original effectiveness at no cost to the Department if failure occurs during the time period ¹ specified below.
	Orange	All Colors, except Orange	All Colors, except Orange
I	Not used	<5 years	5-7 years
II	<3 years	<5 years	5-10 years
III	<3 years	<7 years	7-10 years
DOTD Type VII (Fluor. Orange)	<3 years	Not used	Not used
IX	Not used	<5 years	5-10 years

¹From the date of sign installation.

1. Replacement sheeting for sign faces, material, and labor shall carry the unexpired guaranty of the sheeting for which it replaces.

2. The sign fabricator shall be responsible for dating all signs with the month and year of fabrication at the time of sign fabrication. This date shall constitute the start of the guaranty obligation period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures LR 24:703 (April 1998), amended LR 26:357 (February 2000), LR 30:

§303. Minimum Standards for Striping

A. Temporary Pavement Markings

1. Temporary Tape. Temporary tape shall comply with ASTM D 4592, Type I (removable) or Type II (non-removable) and shall be an approved product listed in QPL-60.

2. Painted Stripe. Paint shall be an approved traffic paint complying with Subsection 1015.12. of the *Louisiana Standard Specifications for Roads and Bridges*. Glass beads for drop-on application shall comply with Subsection 1015.13 of the *Louisiana Standard Specifications for Roads and Bridges*.

3. Temporary Raised Pavement Markings for Asphaltic Surface Treatment. Temporary raised pavement markers for asphaltic surface treatment shall be flexible reflective tabs having a nominal width of 4 inches (10 cm). The markers shall be yellow with amber reflective area on both sides. The body of the marker shall consist of a base and vertical wall made of polyurethane or other approved material and shall be capable of maintaining a reasonable vertical position after installation. The initial minimum reflectivity at an entrance angle of -4 degrees and an observation angle of 0.2 degrees shall be 230 mcd/lx when measured in accordance with ASTM E 810.

a. The reflective material shall be protected with an easily removable cover of heat resistant material capable of withstanding and protecting the reflective material from the application of asphalt at temperatures exceeding 325°F (160°C).

b. The markers shall be an approved product listed in QPL 74.

B. Traffic Paint. The contractor shall have the option of furnishing either alkyd traffic paint or water-borne traffic paint; however, the same type paint shall be used throughout the project. Each paint container shall bear a label with the name and address of manufacturer, trade name or trade-mark, type of paint, number of gallons, batch number and date of manufacture. Paints shall be approved products listed in QPL 36; shall show no excessive settling, caking or increase in viscosity during 6 months of storage, and shall be readily stirred to a suitable consistency for standard spray gun application. An infrared curve shall be generated in accordance with DOTD TR 610 and compared with the standard curve made during the initial qualification process.

1. Alkyd Traffic Paint. This material shall be a rapid-setting compound suitable for use with hot application equipment. The material shall meet the requirements of Table 1015-11.

Table 1015-11 Alkyd Traffic Paint Physical Properties

Property	Test Method	Requirements	
		Min	Max
Weight, kg/L	ASTM D 1475	1.5	---
Viscosity @ 25°C, Krebs Units	ASTM D 562	85	115
Dry to No Pick Up, s	ASTM D 711	---	180
Directional Reflectance, %	ASTM E 97	80	---
White		50	---
Yellow			
Bleeding	Fed. Spec. TT-P-115	Pass	
Total Solids, % by mass	ASTM D 1644, Method A	70	---
Film Shrinkage	1	Pass	
Hiding Power	2	Pass	
Pigment, %	ASTM D 2371	50	55
Nonvolatiles in Vehicle, % by mass	ASTM D 215	35	---
Flexibility	Fed. Spec. TT-P-1952	Pass	
Pigment Composition	3	Pass	

¹Film Shrinkage: With a film applicator, cast a wet film with a thickness of 30 mils (750 µm) over a smooth glass plate. Allow sample to cure at room condition for 4 to 5 hours. Using a micrometer, measure the plate thickness before the film is cast using five measurements to obtain an average. The cured film shall have a minimum thickness of 12 mils (300 µm).

²Hiding Power: The paint shall have a wet hiding power of at least 350 square feet per gallon (8.6 m²/L). The compound shall have sufficient hiding power to cover any pavement when applied at a wet film thickness of 15 mils (375 µm).

³Pigment Composition: White paint shall contain at least 1.5 pounds (180 g) of titanium dioxide (TiO₂) pigment per gallon (L) as determined using DOTD TR 523 with at least 92 percent TiO₂ content. The TiO₂ shall comply with ASTM D 476. Yellow paint shall contain at least 1.3 pounds (160 g) of medium chrome yellow pigment per gallon (L) as determined using DOTD TR 523. Medium chrome yellow pigment shall comply with ASTM D 211, Type III.

2. Water Borne Traffic Paint. This material shall be a rapid setting waterborne compound suitable for use with hot application equipment. The material shall meet the requirements of Table 1015-12.

Table 1015-12 Water Borne Traffic Paint Physical Properties

Property	Test Method	Requirements	
		Min	Max
Weight, kg/L	ASTM D 1475	1.5	---
Viscosity, at 25°C Krebs Units	ASTM D 562	75	90
Drying to No Pickup, min.	ASTM D 711	---	10
Dry through, min.	ASTM D 1640	---	20
Volume Solids, %	---	58	---
Total Solids, % by mass	ASTM D 2369	70	---
Pigment, % by mass	ASTM D 3723	45	55
Nonvolatile Vehicle, % by mass	Fed. Test 141B	40	---
Bleed Ratio	Fed. Spec. TT-P-1952	0.96	---
Daylight Reflectance, %	Fed. Test 141B	85	---
White		54	---
Yellow			
Hiding Power (Contract Ratio) at 250 µm	Fed. Test 141B	0.96	---
Flexibility	Fed. Spec. TT-P-1952	Pass	
Drying Time, min.	1	---	3
Fineness of Grind	ASTM D 1210	3	---
Freeze-Thaw	ASTM D 2243	Pass	
Heat Stability	Fed. Spec. TT-P-1952	Pass	

Color	2	Pass	
Volatile Organic Compounds (g/L)	---	---	150
Pigment Composition	3	Pass	

¹Drying Time to No Track - Paint applied at 15 mils (375 µm) wet on the road surface with paint heated to 120-150°F (50-65°C) shall not show tracking when a standard size automobile crosses in a passing maneuver at three minutes.

²Color? Yellow paint shall comply with the requirements of Table 1015-13 when tested in accordance with ASTM E 1349. White shall be a clean, bright, untinted binder.

³The white paint shall contain a minimum of 1.0 pound per gallon (120 g/L) of titanium dioxide (TiO₂) as determined using DOTD TR 523. The titanium dioxide shall comply with ASTM D 476.

Table 1015-13 Water Borne Traffic Paint Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant C.)

C. Large Embedment Coated Glass Beads for Pavement Markings. Large embedment coated glass beads for use with painted traffic striping and flat thermoplastic striping shall be transparent, clean, colorless glass, smooth and spherically shaped, free from milkiness, pits, or excessive air bubbles and conform to the specific requirements for the class designated. The beads shall be non-flotation, embedment coated and conform to the following specific requirements.

1. Gradation. The testing for gradation of the beads shall be in accordance with ASTM D 1214 and shall meet the gradation requirements specified below.

a. Painted Traffic Striping. Glass beads for painted traffic striping shall meet the gradation requirements of Table 1015-14.

TABLE 1015-14 Gradation of Large Embedment Coated Glass Beads for Painted Traffic Striping

U.S. Sieve (Metric Sieve)	Percent Retained
No. 12 (1.7 mm)	0
No. 14 (1.4 mm)	0-5
No. 16 (1.18 mm)	5-20
No. 18 (1.00 mm)	40-80
No. 20 (850 µm)	10-40
No. 25 (710 µm)	0-5
PAN	0-2

b. Flat Profile Thermoplastic Striping. Drop-on beads for flat profile thermoplastic striping shall meet the gradation requirements of Table 1015-15 as determined by the thickness of the striping.

TABLE 1015-15 Gradation of Embedment Coated Glass Beads for Flat Profile Thermoplastic Striping

Thickness	Number of Bead Drops	Application #1	Application #2
40 mils	Single Drop	See Table 1015-14	N/A
90 mils or greater	Double Drop	See Table 1015-16	AASHTO M 247 Type I

TABLE 1015-16 Gradation of Large Embedment Coated Glass Beads for First Drop on Flat Thermoplastic Striping

U.S. Sieve (Metric Sieve)	Percent Retained
No. 10 (2.0 mm)	0
No. 12 (1.7 mm)	0-5
No. 14 (1.4 mm)	5-20
No. 16 (1.18 mm)	40-80
No. 18 (1.00 mm)	10-40
No. 20 (850 µm)	0-5
PAN	0-2

2. Roundness. The beads shall have a minimum of 80 percent rounds per screen for the two highest sieve quantities. The remaining sieve fractions shall have no less than 75 percent rounds as determined by microscopic examination.

3. Angular Particles. The beads shall have no more than three percent angular particles per screen.

4. Refractive Index. The beads shall have a refractive index of 1.50 to 1.52 when tested by the liquid immersion method.

5. Embedment Coating. The large beads for thermoplastic striping shall be coated with an adhesion assuring coating. The smaller AASHTO M247 Type I beads shall be coated to provide free flowing characteristics when tested in accordance with AASHTO M247 Section 4.4.1. and assure adhesion. Glass beads shall be properly coated and conform to the requirements when tested as described in DOTD TR 530 Determination of Embedment Coating on Large Embedment Coated Glass Beads for Pavement Markings.

6. Packaging and Marking. The beads shall be packaged in moisture proofed containers. Each container shall be stamped with the following information: Name and address of manufacturer, shipping point, trademark or name, the wording "Large Embedment Coated Glass Beads," class, weight, lot number and the month and year of manufacture. The container for the AASHTO M 247 Type I beads shall be similarly stamped except that the wording shall be "Glass Beads."

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:705 (April 1998), amended LR 30:

§305. Minimum Standard for Thermoplastic Pavement Markings

A. Description. This specification covers hot-sprayed or hot-extruded reflective thermoplastic compound for pavement markings on asphaltic or portland cement concrete pavement. Thermoplastic marking material applied to asphaltic surfaces shall consist of an alkyd-based formulation. Thermoplastic marking material applied to portland cement concrete surfaces shall consist of either an alkydbased or hydrocarbonbased formulation. Material shall be so manufactured as to be applied by spray or extrusion to pavement in molten form, with internal and surface application of glass spheres, and upon cooling to normal pavement temperature, shall produce an adherent, reflectorized pavement marking of specified thickness and width, capable of resisting deformation.

1. Material shall not scorch, break down, or deteriorate when held at the plastic temperature specified in

Subsection 732.03(d)(1) for 4 hours or when reheated four times to the plastic temperature. Temperature-vs-viscosity characteristics of plastic material shall remain constant when reheated four times, and shall be the same from batch to batch. There shall be no obvious change in color of material as the result of reheating four times, or from batch to batch.

B. Suitability for Application. Thermoplastic material shall be a product especially compounded for pavement markings. Markings shall maintain their original dimension and placement and shall not smear or spread under normal traffic at temperatures of below 140°F (60°C). Markings shall have a uniform cross section. Pigment shall be evenly dispersed throughout its thickness. The exposed surface shall be free from tack and shall not be slippery when wet. Material shall not lift from pavement in freezing weather. Cold ductility of material shall be such as to permit normal movement with the pavement surfaced without chipping or cracking.

C. Standard Thermoplastic Pavement Markings. Materials shall be approved products listed in QPL 63 and shall comply with AASHTO M 249 and the specifications as stated herein with the following modifications:

1. Color. The yellow thermoplastic shall comply with the requirements of Table 1015-7 when tested in accordance with ASTM E 1349.

Table 1015-7 Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant C.)

2. Whiteness Index. The white thermoplastic shall have a minimum whiteness index of 40 when tested according to ASTM E 313.

D. Inverted Profile Thermoplastic Pavement Markings. Materials shall be approved products listed in QPL 63 and shall comply with AASHTO M 249 and these specifications as follows:

1. Bead Content. Glass bead content for inverted profile thermoplastic pavement markings shall be in accordance with Table 1015-8.

Table 1015-8 Bead Content

U.S. Standard Sieve Size (Microns)	Class A1 --10% min. (by wt.) of thermoplastic compound, Percent Retained	Class B1 --25% min. (by wt.) of thermoplastic compound
14 (1400)	0 - 1	Beads shall meet gradation requirement of AASHTO M 247, Type I.
16 (1190)	0 - 20	
18 (1000)	0 - 45	
20 (840)	30 - 80	
30 (595)	20 - 50	
Pan	0 - 10	

¹Refer to Section 732 when applying as drop-on beads for inverted profile thermoplastic pavement markings.

2. Bead Quality. The glass beads shall be coated with A-116 Silane or other adhesion promoting coating. The glass beads shall have a maximum of 3 percent irregular particles and a maximum of 5 percent air inclusions. The percentage

of true spheres shall be 90 percent minimum for Class A beads and 80 percent minimum for Class B beads.

3. Binder Content. The binder content of the thermoplastic material shall be 19 percent minimum.

4. Titanium Dioxide. The titanium dioxide shall meet ASTM D476, Type II, Rutile grade, 93 percent minimum titanium content.

5. Yellow Pigment. The yellow pigment for the yellow thermoplastic material shall be 4 percent minimum.

6. Color. The yellow thermoplastic shall comply with the requirements of Table 1015-9 when tested in accordance with ASTM E 1349.

Table 1015-9 Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant C.)

7. Whiteness Index. The white thermoplastic shall have a minimum whiteness index of 40 when tested according to ASTM E 313.

8. Specific Gravity. The specific gravity of the thermoplastic pavement marking material shall not exceed 2.35.

9. Flowability. After heating the thermoplastic material for four hours 75 minutes at 425°F (218°C) and testing flowability, the white thermoplastic shall have a maximum percent residue of 22 percent and the yellow thermoplastic shall have a maximum residue of 24 percent.

10. Reflectivity. The initial reflectance for the in-place marking shall have the minimum reflectance value of 450 mcd/lux/sq m for white and 350 mcd/lux/sq m for yellow when measured with a geometry of 1.5° degrees observation angle and 86.5° degrees entrance angle.

11. Wet Reflectivity. The minimum in-place marking when wet shall have the minimum reflectance value of 200 mcd/lux/sq m for white and 175 mcd/lux/sq m for yellow when measured with a geometry of 1.5° degrees observation angle and 86.5° degrees entrance angle. The stripe shall be wet utilizing a pump-type garden sprayer for 30 seconds. After 5 seconds, place the reflectometer on the stripe and measure the retro reflectance.

12. Retained Reflectivity. The thermoplastic pavement marking material shall retain the minimum reflectance value of 130 mcd/lux/sq m for at least four years after placement. Failure to meet this requirement shall require the contractor to replace the portion of the material shown to be below these minimums. The contractor shall provide a written warranty indicating the terms of this requirement.

13. Inverted Profile. The thermoplastic pavement marking material shall be applied to have individual profiles having a minimum height of 0.140 inches (3.5 mm) with the recessed inverted profiles having a thickness of 0.025 to 0.050 inches (0.6 mm to 1.25 mm). The profiles shall be well defined and not excessively run back together.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measure, LR 24:707 (April 1998), amended LR 30:

§307. Minimum Standards for Preformed Plastic Pavement Marking Tape

A. General. Preformed plastic pavement marking tape shall be approved products listed on QPL 64 and shall comply with ASTM D 4505 Type I, Type I - High Performance (as specified below) or Type V, except as modified herein. The marking tape shall be Grade A, B, C, D, or E. The type and color shall be in accordance with the plans and the *Manual on Uniform Traffic Control Devices* (MUTCD).

B. Thickness. All preformed plastic pavement marking tape shall have a minimum overall thickness of 0.060 inches (1.5 mm) when tested without the adhesive.

C. Friction Resistance. The surface of the Type I preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 35 British Polish Number (BPN) when tested according to ASTM E 303. The surface of the Type I-High Performance and Type V preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 45 BPN when tested according to ASTM E 303, except values for the Type V are calculated by averaging values taken at downweb and at a 45° degrees angle from downweb.

D. Retro Reflective Requirements. The preformed plastic pavement marking tape shall have the minimum specific luminance values shown in Table 1015-10 when measured in accordance with ASTM D 4061.

Table 1015-10 Specific Luminance

Type	Observation Angle, degrees	Entrance Angle, degrees	Specific Luminance (mcd/sq m/lx)	
			White	Yellow
I	0.2	86	500	400
	1.0	86.5	300	175
I-High Performance	0.2	86	700	560
	1.0	86.5	400	225
V	0.2	86	1100	800
	1.0	86.5	700	500

E. Durability Requirements. The Type I-High Performance preformed plastic pavement marking tape shall show no appreciable fading, lifting or shrinkage for at least 12 months after placement when placed in accordance with the manufacturer's recommended procedures on pavement surfaces having a daily traffic count not to exceed 15,000 ADT per lane.

1. The Type V preformed plastic pavement marking tape shall show no appreciable fading, lifting or shrinkage for at least 4 years after placement for longitudinal lines and at least 2 years after placement for symbols and legends.

2. The Type V preformed plastic pavement marking tape shall also retain the following reflectance values for at least 4 years after placement for longitudinal lines and at least 2 years after placement for symbols and legends.

Observation Angle, degrees	Entrance Angle, degrees	Specific Luminance (mcd/sq m/lx)	
		White	Yellow
1.0	86.5	100	100

F. Plastic Pavement Marking Tape Guaranty (Type I - High Performance and Type V). If the plastic pavement marking tape fails to comply with the performance and durability requirements of Subsection 1015.11 (§307) within 12 months for Type I High Performance and four years for Type V, the manufacturer shall replace the plastic pavement marking material at no cost to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:708 (April 1998), amended LR 30:

§309. Minimum Standards for Raised Pavement Markers

A. Markers shall be either nonreflectorized or reflectorized, as specified. Markers shall be approved products listed in QPL 9. Infrared curves of materials used in markers shall match approved curves on file at the department's Materials and Testing Section.

1. Nonreflectorized Markers

a. Description. Nonreflectorized markers shall consist of an acrylonitrile-butadiene-styrene polymer or other approved material, and shall be 4-by-6-inches (100-by-150-mm).

b. Physical Requirements. Markers shall comply with ASTM D4280. The color shall be in accordance with the plans and the MUTCD.

2. Reflectorized Markers. Reflectorized markers shall comply with ASTM D4280, Designation H-Marker with hard, abrasion-resistant lens surface. The type and color shall be in accordance with the plans and the MUTCD. The markers shall be either standard having approximate base dimensions of 4-by-4-inches (100-by-100-mm) and a maximum height of 0.80 inches (20 mm) or low profile having approximate base dimensions of 4-by-2-inches (100-by-50-mm) and a maximum height of 0.60 inches (15 mm).

3. Adhesives

a. Epoxy Adhesive. Epoxy adhesive shall be Type V epoxy resin system complying with Subsection 1017.02.

b. Bituminous Adhesive. The adhesive shall conform to ASTM D 4280 and shall be an approved product listed in QPL 59.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Standards, LR 24:709 (April 1998), amended LR 30:

Family Impact Statement

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. the implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family;

2. the implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children;

3. the implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family;

4. the implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget;

5. the implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children;

6. the implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of the notice of intent to Sherryl J. Tucker, Senior Attorney, P. O. Box 94245, Baton Rouge, LA 70804, Telephone (225)237-1359.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Minimum Standards for Reflectivity of Work-Site Materials

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

There should be no cost to state or local governmental units to implement this Rule. Standards on reflectivity of materials have been in effect for many years and these Rules were originally formalized in 1997. These Rules are being adjusted solely to reflect current products available and to be consistent with recent changes in *Louisiana Standard Specification for Roads and Bridges*. These new products result in enhanced visibility and safety for the traveling public. Any increase in competition among suppliers of reflective materials may result in a long-term financial savings for the state, the amount of which cannot be determined at this time.

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

This Rule-making 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)

Suppliers of reflective sign sheeting materials will be directly affected by this rules change. More suppliers of these materials may be able to meet the current specifications under the Rule change and therefore the benefit to them will be positive.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be a positive impact on competition and employment because more suppliers of reflective sheeting will be able to compete for department contracts.

John P. Basilica, Jr.
Undersecretary
Management and Finance
0311#048

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT
Department of Treasury
Teachers' Retirement System

Earnable Compensation (LAC 58:III.201)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Trustees of Teachers' Retirement System of Louisiana approved an amendment to policies governing the Earnable Compensation Accounts, LAC 58:III.201 as follows.

Title 58
RETIREMENT

Part III. Teachers' Retirement System of Louisiana
Chapter 2. Earnable Compensation Accounts

§201. Earnable Compensation Accounts

A. Earnable compensation shall not include compensation paid to an active member or to an inactive member of Teachers' Retirement System of Louisiana (TRSL) if the compensation is paid by a secondary employer and is reported to the Internal Revenue Service (IRS) on a Form 1099, but only if both the following occur.

1. The individual contract is for \$1,000 or less, and a Form 1099 is issued.

2. The cumulative amount of the Form 1099 payments issued by a single secondary employer to that member does not exceed \$15,000 in a fiscal year.

B. If an individual contract is for more than \$1,000, then that entire payment is earnable compensation subject to TRSL employer and employee contributions.

C. If the cumulative amount of the Form 1099 payments issued by a single secondary employer to that member exceeds \$15,000 in a fiscal year, then all Form 1099 payments in excess of \$15,000 in that TRSL fiscal year are earnable compensation subject to TRSL employer and employee contributions.

Note: A secondary employer is one who does not report W-2 earnings on this member.

D. Earnable compensation shall include any and all compensation paid to a retiree of this system by a TRSL-covered employer regardless of IRS reporting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:701(10).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 30:

Interested persons may comment on the proposed Rule in writing until 4:30 p.m., January 4, 2004, to Bonita B. Brown, Director, CPA, Teachers' Retirement System of Louisiana, P.O. Box 94123, Baton Rouge, LA 70804-9123.

Bonita B. Brown, CPA
Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Earnable Compensation

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

This Rule will have no costs or savings to state or local governmental units. It authorizes current practice under the provisions of R.S. 11:701(10) regarding earnable compensation.

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

This Rule will 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)

This Rule will have no cost or create economic benefit to individuals or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Bonita B. Brown, CPA
Director
0311#027

H. Gordon Monk
Staff Director
Legislative Fiscal Office