

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Seed Commission

#### Seed Stock (LAC 7:XIII.Chapter 3)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 3:1433, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, proposes to adopt regulations governing the sale, distribution and planting of adulterated rice seed stock containing adventitious presence of genetically modified traits, in particular, LibertyLink traits.

In August of 2006, the United States Department of Agriculture (USDA) announced that trace amounts of a genetically modified trait, LibertyLink 601 (LL traits) had been found in the U.S. rice supply. The announcement also indicated that based on the scientific data reviewed, the USDA and the U.S. Food and Drug Administration concluded that no human health, food safety, or environmental concerns were associated with this genetically modified rice. The rice industry in Louisiana contributes over \$250,000,000 to Louisiana's economy through the sale of rice.

Following that announcement, the rice market has experienced turmoil because of the uncertainty of being able to market such rice, despite the conclusions regarding human health, food safety and environmental concerns. The European Union has stated that the countries in the union will not buy rice contaminated with LL traits. It is vital that Louisiana's rice industry maintain the European Union as a market for Louisiana rice. Further it is necessary to forestall any embargo of rice that comes from Louisiana by other rice importing countries.

These rules are enabled by R.S. 3:1433.

#### Title 7

#### Agriculture and Animals

#### Part XIII. Seeds

#### Chapter 3. Adulterated Seed Stock and Other Propagating Stock

#### Subchapter A. Rice Seed Stocks Containing the Presence of LibertyLink Traits

#### §301. Planting of Rice Seed Stocks with LL Traits

A. The following seeds may not be sold, offered for sale, or planted in Louisiana as seed for purposes of producing a new plant, except as otherwise provided by this Chapter.

1. Any portion of any variety of rice that tests positive, according to tolerances established by the department, for LL traits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 34:

#### §303. Planting of All Rice Seed Stocks

A. Rice seed stocks, where the variety as a whole is found to test positive, according to tolerances established by the department, for LL traits may be sold, offered for sale or planted in Louisiana only for the purpose of seed stock increase, subject to the sampling and testing requirements set out in this Chapter.

B. If a portion of a variety of rice seed stock is found to test positive for LL traits, according to tolerances established by the department, the portion found to test positive shall be placed under a "stop-sale" order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 34:

#### §305. Sampling of Rice Seed Stocks for the Detection of LL Traits

A. Samples of all rice seed stocks shall be taken by the Louisiana Department of Agriculture and Forestry (department) for testing. The department shall conduct the testing or cause the testing to be done in laboratories approved by the department. The department shall determine the method and manner of sampling and the number of samples that are needed.

B. Each sample must test negative for LL traits according to tolerances established by the department.

C. All costs incurred by the department in regard to sampling, including but not limited to the taking, transportation, testing, and disposal of samples, shall be paid by the person or entity requesting the sampling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 34:

#### §307. Rice Seed Stocks Originating from Out-Of-State

A. All rice seed stocks originating from out-of-state must meet the requirements for sampling, testing, and handling, as established by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 34:

#### §309. Carry-Over Rice Seed Stocks

A. Any carry-over rice seed stocks that have been processed, repackaged, or otherwise adulterated in any manner that would jeopardize the integrity of the seed lot are subject to the sampling and testing requirements set out in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 34:

**§311. Stop-Sale**

A. Any lot of rice seed that is subject to the requirements of this Chapter that tests positive for LL traits, according to tolerances established by the department, shall be placed under a "stop-sale" order and moved, handled or disposed of only with the express permission of the commissioner or his designate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 34:

**Family Impact Statement**

The proposed amendments to Title 7 Part XIII. Chapter 3 regarding the sale, distribution and planting of adulterated seed stock and other propagating stock should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

All interested persons may submit written comments on the proposed Rules through the close of business on September 27, 2007, to Eric Gates, Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments in writing at the address above. No preamble concerning the proposed Rules is available.

Bob Odom  
Commissioner

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

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

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

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

There is estimated to be 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)**

The estimated cost to directly affected persons or non-governmental units is approximately \$215 for each sample tested. There will be approximately 225 samples taken with a one-time approximate total cost to the Louisiana rice industry of \$48,375 for the 2008 crop season, which is the projected cost associated with these rules as a whole, and not the minor amendment changes. Most sampling will be done in

conjunction with normal testing procedures. The Department of Agriculture does not anticipate having many seed samples containing the LibertyLink traits. Without these regulations, all Louisiana rice would be subject to embargo, which could cost the Louisiana rice industry an estimated \$225 million.

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

The proposed amendments are not anticipated to have an effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0708#025

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Civil Service  
Civil Service Commission**

**Certification of Eligibles**

The State Civil Service Commission will hold a public hearing on Wednesday, September 12, 2007, to consider the following rule proposals. The hearing will begin at 9 a.m. and will be held in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

The following will be considered at the meeting.

**Amend Rule 8.4(e) Certification of Eligibles**

(e) An applicant who has obtained a baccalaureate degree from an accredited college or university with an overall grade-point average (GPA) of 3.5 or higher may be appointed probationally or by job appointment to any professional level job for which possession of the baccalaureate degree alone is sufficient to meet the Minimum Qualifications. ...

**Explanation**

This change clarifies that Rule 8.4(e) may be used for job appointments as well as for probational appointments.

Persons interested in making comments relative to this proposal may do so at the public hearing or by writing to the Director of State Civil Service at Post Office Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Anne S. Soileau  
Director

0708#040

**NOTICE OF INTENT**

**Department of Civil Service  
Civil Service Commission**

**Continuous State Service**

The State Civil Service Commission will hold a public hearing on Wednesday, September 12, 2007, to consider the following Rule proposals. The hearing will begin at 9 a.m. and will be held in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

The following will be considered at the meeting:

**Repeal Rule 1.1 (Definition of) 'Continuous State Service' Explanation:**

This Rule is being repealed because the term "Continuous State Service" as it is defined is no longer used in the Civil Service rules.

Persons interested in making comments relative to this proposal may do so at the public hearing or by writing to the Director of State Civil Service at Post Office Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Anne S. Soileau  
Director

0708#037

**NOTICE OF INTENT**

**Department of Civil Service  
Civil Service Commission**

Hiring Rate  
Probationary Period

The State Civil Service Commission will hold a public hearing on Wednesday, September 12, 2007, to consider the following rule proposals. The hearing will begin at 9 a.m. and will be held in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

The following will be considered at the meeting:

**6.5(a) Hiring Rate**

**Amend Rule 6.5(a)**

(a) Subject to Rule 6.5(b), the pay of a job appointee, moving into a probational or permanent appointment in the same agency with no break in service, shall not be reduced.

**Explanation**

This proposed change removes the requirement that job appointees that are moved to probational or permanent appointments in the same agency be hired in the same job title in order to retain their current rate of pay. Any movement of an employee from a job appointment directly to a permanent appointment will be governed by Rule 9.1.

**ADD Rule 9.1(h)**

(h) An employee who has served at least 24 months in a job appointment with no break in service may be appointed to the same position, or a position in the same job title, in the same agency without serving a probationary period.

**Explanation**

If an employee has been in a job appointment in the same job title for 24 months without a break in service, this Rule gives the appointing authority the option to permanently appoint that employee into the same job title without serving an additional probationary period.

**Amend Rule 9.1(a)1**

1. Permanent positions following certification from an open competitive eligible list except as provided in Rule 9.1(h).

**Explanation**

Change needed to implement proposed new Rule 9.1(h).

Persons interested in making comments relative to this proposal may do so at the public hearing or by writing to the Director of State Civil Service at Post Office Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Anne S. Soileau  
Director

0708#038

**NOTICE OF INTENT**

**Department of Civil Service  
Civil Service Commission**

Job Appointment

The State Civil Service Commission will hold a public hearing on Wednesday, September 12, 2007, to consider the following rule proposals. The hearing will begin at 9 a.m. and will be held in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

The following will be considered at the meeting:

Amend Rule 1.18

Amend Rule 8.14(a), 8.14(c), Repeal and reenact Rule 8.14(d) in Rule 8.14(c), 8.14(g)

**Proposed Amendment to C.S. Rule 1.18**

'Job Appointment' is a non-permanent appointment of an employee to fill a position in the classified service for a limited period of time.

**Explanation for Proposed Amendment to C.S. Rule 1.18**

The proposed amendment to the definition of job appointment is necessary due to the change in Rule 8.14. See proposed rule change to 8.14 below.

**Proposed Amendment to C.S. Rule 8.14.**

8.14(a)

(a) An appointing authority may use a job appointment to fill a position for a period not to exceed three years.

For rational business reasons, an appointing authority may request a longer term job appointment. The commission may approve such requests or delegate approval authority to the director.

An agency shall maintain written justification stating the reason for the job appointment, as well as justification for any extension requested and a copy of the approval....

**Explanation for Proposed Amendment to C.S. 8.14(a)**

Up until now, job appointments have been limited to three years. This has presented a problem when an agency had a grant or other outside source of funds for a program or project, which was longer than three years but still finite. To staff these programs or projects, agencies had to request authority for unclassified appointments for positions which existed in the classified service; in the alternative, agencies filled the positions with job appointments and risked losing qualified, experienced staff if the need extended beyond three years. This change will allow agencies to maintain employees hired on a job appointment beyond the current absolute maximum if there is a rational business reason for extending the position beyond three years, and the extension is approved by the commission.

8.14(c)

- (c) Job appointments may be made:
1. In accordance with Rule 8.4(d) [range of eligible scores];
  2. In accordance with Rule 8.9 [five highest grade groups];
  3. On the basis of Rule 7.20 [non-competitive classes];
  4. On the basis of Rule 8.18(a) [non-competitive reemployment eligibility]
  5. In the absence of five available eligibles on an appropriate list, the director may authorize the appointment of any person who possesses the qualifications as stated on the official specification for that job.

**Explanation for Amendment to Rule 8.14(c)**

Collapses Rules 8.14(c) and 8.14(d) and clarifies manners in which job appointments may be made.

8.14(d)

(d) Repealed and reenacted in Rule 8.14(c)

**Amend Rule 8.14(g)**

(g) The commission or Director may, at any time, cancel a job appointment and/or withdraw an agency's authority to make such appointments.

**Explanation for Amendment to Rule 8.14(g)**

Only the commission may cancel an action taken by the Commission, or they may delegate that authority to the director.

Persons interested in making comments relative to this proposal may do so at the public hearing or by writing to the Director of State Civil Service at Post Office Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Anne S. Soileau  
Director

0708#039

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 111–The Louisiana School, District, and State Accountability System  
(LAC 28:LXXXIII.301, 517, 613, 707, 709, 903, 1301, 1601-1609, 1901, 2101, 2301, 2401, 2501-2505, 2701-2721, 3301-3303, 3503, 3507, 3701, and 3905)

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 revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State's Accountability System is an evolving system with different components that are required to change in response to state and federal laws and regulations.

Proposed changes in Bulletin 111 set the target graduation rate for schools at sixty-five (65) percent. Additionally,

proposed changes separate the current School Improvement (SI) set of labels and remedies into 1) the "Academically Unacceptable Schools (AUS)" set, which is time-bound, and 2) the "Subgroup Component Failure (SCF)" set, which is in line with requirements of the *No Child Left Behind Act*. Accordingly, criteria for schools entering, moving within, and exiting these various levels of AUS and SCF are detailed as are the related remedies. There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

**Title 28**

**EDUCATION**

**Part XXXIII. Bulletin 111–The Louisiana School, District, and State Accountability System**

**§301. School Performance Score Goal**

A. - D. ...

E. Beginning in 2004, preliminary accountability results issued each summer shall include both preliminary school performance scores and subgroup component analyses for those schools on the academic watch list, or in school improvement 2 or higher, or who have failed the subgroup component the prior year. Beginning in 2007, preliminary accountability results each summer shall include schools as delineated in Paragraph 2 below. Final accountability results shall be issued during the fall semester of each year and all accountability reports will reflect the configuration of the school as it existed the prior spring semester.

1. – 2.d. ...

3. Beginning in 2008, the preliminary accountability results shall include those schools identified as;

- a. failing the SPS component based on the current year Baseline SPS; or
- b. failing the SPS component based on the prior year Baseline SPS; or
- c. being academically unacceptable (any level) the prior academic year; or
- d. failing the subgroup component based on prior spring test results.

F. - H.4 ...

I. In the fall of 2007, schools will receive two SPS.

1. The Growth SPS will determine Growth Labels and rewards status for the SPS component.

2. The Growth SPS will consist of the indicators and weighting in the table above, with the test data collected in spring 2007, and attendance and dropout data collected in the academic year 2005-2006.

3. The Baseline SPS will determine Performance Labels, Academic Assistance levels and Academically Unacceptable schools.

I.4. - J.1. ...

2. The Growth SPS will continue to determine Growth Labels and rewards status for the SPS component.

J.2a. - L....

2005-2007 High School Transition			
2005			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2005	GEE(60%), Iowa (30%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2005

2005-2007 High School Transition			
2005			
	Years of Data	Indicators/Weights	Generates
Baseline SPS	2004 & 2005	GEE(60%), Iowa (30%), Attendance (5%), Drop (5%)	Performance Label, SI Status, SPS AYP for 2005
Transition Baseline SPS	2004 & 2005	GEE(90%), Attendance (5%), Drop (5%)	Growth Target, Growth Goal for 2006
2006			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2006	GEE(90%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2006
Baseline SPS	2005 & 2006	2006 GEE/iLEAP (90%), 2005 & 2006 Attendance (5%), 2005 & 2006 Drop (5%)	Performance Label, SI Status refer to H.3.a. above), SPS AYP for 2006; Growth Target and Goal for 2007
2007			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2007	GEE/iLEAP (90%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2007
Baseline SPS	2006 & 2007	2006 & 2007 GEE/iLEAP (70%), 2007 Graduation Index (30%)	Performance Label, SI and AA status, SPS AYP for 2007; Growth Target and Goal for 2008 (refer to I.5.a. above)
2005-2007 High School Transition 2005 - 2007 High School Transitions 2005-2007 High School Transition 2005-2007 High School Transition			

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2034 (November 2006), LR 32:2035 (November 2006), LR 33:424 (March 2007), LR 33:

### Chapter 5. Calculating the NRT Index §517. Inclusion of Students

A. ...

B. A school that has at least 10 percent of its testing population transferring from other schools within the LEA after October 1 but before the conclusion of spring testing may request the LEA file an appeal (as described in §3109) and provide the Louisiana Department of Education with sufficient evidence that excluding these students from school performance score calculations would change its academic assistance, AUS or Subgroup Component Failure level; or its growth or rewards label.

1. - 1c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:1512 (July 2005), LR 31:2422 (October 2005), LR 31:2764 (November 2005), LR 33:

### Chapter 6. Graduation Index §613. Calculating a Graduation Index

A. - B. ...

C. Students who graduate or complete high school in less than 4 years are only eligible for Academic Endorsement, TOPS Opportunity Award, Career/Technical Endorsement, BESE Approved Industry Based Certification, TOPS Tech

and Dual Enrollment, or TOPS Tech and Articulated Credit points if the program existed at the time of the students' exit.

D. Students who complete/exit high school in more than 4 years may earn incentive points for their school provided they are no older than 21 at the beginning of the academic year in which they exit.

1. The incentive points earned is the difference between those a student earned in the 4th year of high school and the points corresponding to the higher level at which the student exits high school in a subsequent year.

a. Students shall not be considered dropouts if they exit the school after earning points for their cohort.

E. Schools that re-enroll students who dropped out of school will earn incentive points if the "reclaimed" students

1. were considered dropouts and were included as such in schools' accountability scores; and

2. are no older than 21 at the beginning of the academic year in which they are re-enrolled; and

3. complete/exit a second time with a GED or higher.

a. These "reclaimed" students shall not be considered dropouts a second time.

F. To insure the accuracy of data used to calculate the graduation index, the calculation shall lag one year behind the collection of the data (the index earned by the graduating class of 2006 will be used for 2007 accountability calculations).

Sample Graduation Index Calculation			
Student Count	Result	Points Per	Points
2	Regular Diploma w/2 Endorsements	240	480
8	Regular Diploma w/ Endorsement	180	1440
35	Regular Diploma	120	4200
10	GED	90	900
6	Skills Certificate or Certificate of Achievement	60	360
4	Attendee	30	120
15	Dropout	0	0
80 Total Students			7500
Attendee from prior year earned GED (90-30)			60
Attendee from prior year earned Skills Cert. (60-30)			30
Dropout from prior year earned Reg. Diploma (120-0)			120
Total Incentive Points			210
Total Points			7710
<b>7710 ÷ 80 =</b>		<b>Graduation Index</b>	<b>96.4</b>

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:

### Chapter 7. Subgroup Component §707. Safe Harbor

A. - B.2. ...

a. achieves a 90 percent attendance rate (for schools without a 12th grade) or 90 percent non-dropout rate through 2006 or a 65 percent graduation rate beginning in 2007 (for schools with a 12th grade). (A 99 percent confidence interval is applied to the 90 percent attendance rate and 90 percent non-dropout rate check); or

b. makes at least 0.1 percent improvement in attendance rate (for schools without a 12th grade) or non-

dropout rate (through 2007 or graduation rate beginning in 2008 for schools with a 12th grade) from the previous year.

c. For schools with a 12th grade, the non-dropout rate shall be evaluated for students in grade 9 and above.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 32:1025 (June 2006), LR 33:253 (February 2007), LR 33:

**§709. Failing the Subgroup Component**

A. ...

B. A school in which all subgroups have passed the subgroup component must also have the school pass the additional academic indicator (AAI). A school passes the AAI when it has:

1. achieved a 90 percent attendance rate (for schools without a 12th grade)/90 percent non-dropout rate, (through 2006/65 percent graduation rate, beginning in 2007 (for schools with a 12<sup>th</sup> grade). (A 99 percent confidence interval is applied to the 90 percent attendance rate and 90 percent non-dropout/65 percent graduation rate check.); or

2. made at least 0.1 percent improvement in attendance rate (for schools without a 12th grade) or non-dropout rate (for schools with a 12th grade) from the previous year. Schools with a 12th grade will use a non-dropout rate through 2007. Beginning in 2008, non-dropout rate will be replaced with graduation rate as described in §708.

3. beginning in 2007 for schools with a 12th grade, earned a sufficient graduation rate as described in §708 or improved the non-dropout rate through 2007 or graduation rate beginning in 2008 by at least 0.1 percent.

NOTE: If a school in which all subgroups have passed the subgroup component does not pass the additional academic indicator, it shall not pass the subgroup component.

C. Any school that has failed the subgroup component in the same subject for two consecutive years is required to implement remedies from the Subgroup Component Failure Table (level 1) (e.g. special education in mathematics in year one and economically disadvantaged in math in year two. The school has failed the subgroup component for two consecutive years and therefore, must implement level 1 remedies from the Subgroup Component Failure).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 30:2256 (October 2004), LR 32:1026 (June 2006, LR 33:

**Chapter 9. Growth Labels**

**§903. Growth Labels**

Exemplary Academic Growth	A school that makes its growth target, the Students with Disabilities (SWD) and Economically Disadvantaged (ED) subgroups improving their adjusted Subgroup Assessment Indices (SAI) at least two points, and the school is not AUS.
Recognized Academic Growth	A school that makes its growth target but either subgroup does not improve its adjusted Subgroup Assessment Index (SAI) at least two points and/or the school is AUS.

Minimal Academic Growth	A school improving (at least 0.1 points) but not meeting its growth target.
No Growth	A school with a change in SPS of 0 to -2.5 points.
School In Decline	A school with a declining SPS (more than -2.5 points).

NOTE: For subgroup performance to be evaluated, there must be a minimum of 10 students in the subgroup.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 33:

**Chapter 13. Rewards/Recognition**

**§1301. Reward Eligibility**

A. Beginning in 2004, a school shall receive recognition and monetary awards (as appropriated by the Legislature) when it achieves a growth label of Exemplary or Recognized Academic growth. Exemplary Academic Growth (EAG) shall require, in addition to achieving the school's Growth Target, at least 2.0 points growth in every subgroup's GPS (African American, American Indian/Alaskan Native, Asian, Hispanic, White, Economically Disadvantaged, Limited English Proficient, Students with Disabilities, and All Students), and the school cannot be in any level of school improvement. Recognized Academic Growth (RAG) is earned by any school that meets its growth target, regardless of subgroup growth or school improvement status. Beginning in 2007, the Subgroup Performance Score (GPS) shall be replaced with an adjusted Subgroup Assessment Index (SAI). The SAI shall be calculated for 2 subgroups - the Economically Disadvantaged and the Students with Disabilities. For combination schools, the K-8 and 9-12 SAI (Subgroup Assessment Indices) will be combined using a weighted average of eligible test takers. (Note - As with the GPS, a minimum of 2.0 points of growth is required in each SAI for a school to qualify for Exemplary Academic Growth. Identification for AUS or Subgroup Component Failure prevents consideration for EAG).

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 30:1446 (July 2004), LR 31:1513 (July 2005), LR 33:

**Chapter 16. Academically Unacceptable Schools and Subgroup Component Failure**

**§1601. Entry into and Exit from Academically Unacceptable School Status**

A. Beginning in 2007, schools with Baseline School Performance Scores (SPS) of less than 60.0 points shall be labeled "Academically Unacceptable Schools" (AUS) and shall implement remedies from the "Academically Unacceptable Schools" table (below).

1. A school shall enter AUS Level 1 when identified as AUS if the school was not labeled AUS the previous year, including schools that did not receive performance labels the previous year.

2. BESE may, during times of transition in the accountability system, waive schools meeting certain conditions from receiving the AUS label and/or from implementing certain remedies and sanctions.

B. Schools progress to more serious levels of AUS based on the number of consecutive years a school has been labeled AUS.

C. Remedies/sanctions are additive, requiring schools to continue implementation of remedies/sanctions from earlier levels (a school labeled AUS3 must implement sanctions from AUS1, 2, and 3).

D. For 2007 only, Academically Unacceptable Schools with a 2006 and 2007 Baseline SPS of 55.0 or greater that received the Growth Label of Recognized Academic Growth in 2007 shall be required in 2007-08 to continue the same remedies/sanctions as in 2006-07 but implement no additional remedies/sanctions.

E. In 2008, all schools labeled AUS shall implement remedies/sanctions based on the number of years they have been labeled AUS.

F. Schools exit Academically Unacceptable School status when their Baseline SPSs are 60.0 or greater.

G. Academically Unacceptable Schools

Academically Unacceptable Schools			
Level	Remedy	Title 1	Non-Title 1
AUS 1 (Year 1) (notified Aug. 1)	Revised School Improvement Plan to open academic year	X	X
	School Choice	X	X
	Scholastic Audit	X	X
	Write a new SIP for the remainder of the current year and the next two years based on Audit findings. {*SIP must incorporate remedies from AUS 2 and 3}	X	X
AUS 2 (Year 2)	Implement SIP based on Scholastic Audit	X	X
	Title 1 Schools - Offer Supplemental Educational Services	X	
	Non-Title 1 Schools - Add from Corrective Action List		X
	Quarterly Implementation Reports	X	X
	Eligible for Turn-Around Specialist	X	X
AUS 3 (Year 3)	Add from Corrective Action List (all schools)	X	X
	Develop Reconstitution Plan	X	X
	Eligible for DE	X	X
AUS 4 (Year 4)	Submit Reconstitution Plan (Type 5 Charter School Proposals are submitted at the same time)	X	X
AUS 5 (Year 5)	Implement Reconstitution Plan	X	X
AUS 6 (Year 6)	Implement Reconstitution Plan	X	X
AUS 6+ (more than 6 years)	Eligible for RSD	X	X

\*To establish continuity in the SIP that addresses the Scholastic Audit – the SIP that is to get the school out of trouble before AUS 4 – schools must plan to move to AUS 2 and AUS 3 over the following two years. This prevents

extensive revisions to a plan in order to implement SES in AUS 2 or to add a "corrective action" in AUS 2 or 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

**§1603. Requirements for Academically Unacceptable Schools**

A. Schools/LEAs that do not comply with AUS remedies and sanctions will be eligible for state takeover.

B. Schools entering AUS Level 1 (AUS1) must:

1. submit for approval a new or revised School Improvement Plan (SIP) to the LDE within 60 days of identification:

a. the plan must meet all guidelines established by the LDE prior to the release of preliminary accountability results and disseminated to LEAs within 10 days of notification of AUS status;

b. the plan must be based on a needs assessment that includes classroom observations and that was conducted within the past 24 months;

c. the plan shall include sufficient detail to drive school reform efforts for the remainder of the academic year in which the school was labeled AUS;

2. participate in a Scholastic Audit provided by the LDE;

3. participate in the creation of a new SIP based on the results of the Scholastic Audit.

4. the new SIP must:

a. be written with the assistance of the LDE (DE, RESC, contractor, or other LDE staff);

b. encompass a two-year span;

c. include details that assume the school will advance to AUS2 and AUS3 over the next two years (include SES and item/s from the Corrective Action list [see requirements for AUS3]);

d. follow all guidelines established by the LDE;

e. include the priorities listed in the Scholastic Audit report;

f. be submitted for approval to the LDE;

5. parents of students in Academically Unacceptable Schools (AUS) shall have the right to transfer their child to a higher performing public school as stated in Chapter 25.

C. Schools entering AUS Level 2 (AUS2) must;

1. implement a SIP meeting the standards in A (above);

2. offer Supplemental Educational Services if they are Title 1 schools;

3. implement a remedy from the following corrective action list if they are not Title 1 schools:

a. replace school staff;

b. implement new curriculum;

c. decrease management authority;

d. contract an outside expert;

e. extend the school year or school day;

f. restructure;

4. submit Quarterly Implementation Reports as defined by the LDE;

5. if desired, enter a cooperative agreement with the LDE to work with a Turnaround Specialist.

D. Schools entering AUS Level 3 (AUS3) must:

1. add a remedy from the corrective action list (all schools);

2. develop a reconstitution plan (see D below); and
3. enter a cooperative agreement with the LDE to work with a Distinguished Educator.

E. In compliance with RS 17:10.5, schools labeled AUS for 4 consecutive years are eligible for state takeover (other criteria may apply).

1. The means for this takeover occurring is a group submitting a proposal for a type 5 charter school and by BESE awarding a charter to the group.

2. Since multiple proposals may be submitted for 1 school, they are evaluated and the proposal most likely to succeed is most likely to receive the charter.

3. The reconstitution plan in C2 (above) serves as an LEA's proposal to keep and reconstitute its school.

4. If the LEA's proposal is determined to have the best chance to succeed, BESE can allow the district the opportunity to reconstitute the school.

F. Schools entering AUS Level 4 (AUS4) must submit the reconstitution plan developed in AUS3 to the LDE for approval and for the LEA to retain control of the school [as opposed to placement in the Recovery School District (RSD)].

G. Schools entering AUS Levels 5 and 6 must implement the approved reconstitution plan.

1. Failure to submit a reconstitution plan or failure to implement an approved reconstitution plan is grounds for placing a school in the RSD.

H. AUS schools that remain AUS for 7 or more years are eligible for the RSD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

**§1605. Entry and Exit from Subgroup Component Failure**

A. Any school that fails to meet Subgroup AYP in the same subject or in the AAI for two consecutive years enters Subgroup Component Failure Level 1 (SCF1).

B. Schools in any level of Subgroup Component Failure remain at the same level if they pass Subgroup AYP for 1 year in the subject that caused them to originally enter.

C. A school exits Subgroup Component Failure when it passes the Subgroup AYP for two consecutive years in the subject that caused them to originally enter Subgroup Component Failure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

**§1607. Requirements for Schools Identified as Failing the Subgroup Component for 2 Consecutive Years**

A. Remedies and sanctions associated with Subgroup Component Failure are additive.

B. Schools identified as entering Subgroup Component Failure shall enter School Improvement Level 1 (SI1) and be required to:

1. submit for approval a two-year SIP within 60 days of receiving notice of failure;
2. offer School Choice as defined in Chapter 25 if the school receives Title 1 funds.

C. Schools in Subgroup Component Failure (SCF) that again fail the subject that caused them to enter SCF will advance to more severe levels

D. Schools that continue to move into more severe levels of Subgroup Component Failure receive the labels and must implement the remedies and sanctions associated with the following table (F).

E. Schools advance in order from SI1 to SI2 to CA1 (Corrective Actions) to CA2 to Restructuring as required by the Elementary and Secondary Education Act (ESEA).

F. Subgroup Component Failure

Subgroup Component Failure			
Level	Remedy	Title 1	Non-Title 1
SI1	New 2 Year School Improvement Plan to open academic year (SIP must incorporate remedies from SI2)	X	X
	School Choice	X	
SI2	Supplemental Educational Services	X	
CA1	Add from Corrective Action List	X	X
	Eligible for Turnaround Specialist	X	X
CA2	Scholastic Audit	X	X
	Develop Alternate Governance Plan based on Audit	X	
	Develop Focused Reconstitution Plan based on Audit		X
Restructuring	Alternate Governance	X	
	Implement Focused Reconstitution Plan	X	X

H. Title 1 schools entering SI2 must offer SES as delineated in Chapter 27.

I. All schools entering CA1 must:

1. add a remedy from the Corrective Action list (§1603 B3);
2. if desired, enter into a cooperative agreement with the LDE to work with a Turnaround Specialist.

I. All schools entering CA2 must;

1. participate in a Scholastic Audit
2. develop an Alternative Governance Plan based on the Scholastic Audit Report if the school is a Title 1 school;
3. develop a Focused Reconstitution Plan based on the Scholastic Audit Report if the school is not a Title 1 school:
  - a. the Focused Reconstitution Plan must address the specific cause of a school's entry into CA2;
  - b. all schools entering the Restructuring level of Subgroup Component Failure must implement the plans developed in I.2 and 3 (above).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

**§1609. Order of Priority for Remedies**

A. When a school is identified as AUS and as failing the subgroup component for 2 or more consecutive years, the

school shall implement remedies and sanctions according to the following priority:

1. AUS 5, 6, and 6+:
  - a. a school identified as AUS 5, must implement remedies and sanctions of AUS 1 through AUS 5;
  - b. Subgroup Component Failure will not be addressed by this school.
2. Restructuring
  - a. A school that is not labeled AUS 5, 6, or 6+ but that is labeled for subgroup failure as "Restructuring" must implement the remedies and sanctions of schools in SII and 2, CA1 and 2, and Restructuring, along with any AUS remedies and sanctions that may apply.
3. AUS 4
  - a. A school labeled as AUS 4 must implement remedies and sanctions of AUS 1 through 4.
  - b. Subgroup Component Failure will not be addressed by this school.
4. AUS 3
  - a. A school labeled as AUS 3 must implement remedies and sanctions of AUS 1 through 3.
  - b. Subgroup Component Failure will not be addressed by this school.
5. CA2
  - a. A school that is not labeled AUS 3, 4, 5, 6, or 6+ but that is labeled for subgroup failure as "CA2" must implement the remedies and sanctions of schools in SII and 2, and CA1 and 2, along with any AUS remedies and sanctions that may apply.
6. AUS 2
  - a. A school labeled as AUS 2 must implement remedies and sanctions of AUS 1 and 2.
  - b. Subgroup Component Failure will not be addressed by this school.
7. CA1
  - a. A school that is not labeled AUS 2, 3, 4, 5, 6, or 6+ but that is labeled for subgroup failure as "CA1" must implement the remedies and sanctions of schools in SII and 2, and CA1, along with any AUS remedies and sanctions that may apply.
8. SI2
  - a. A school that is not labeled AUS 2, 3, 4, 5, 6, or 6+ but that is labeled for subgroup failure as "SI2" must implement the remedies and sanctions of schools in SII and 2, along with any AUS remedies and sanctions that may apply.
9. AUS 1
  - a. Subgroup Component Failure will not be addressed by this school.

10. SII

Remedies and sanctions associated with AUS and/or Subgroup Component Failure take precedence over those associated with Academic Assistance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:10.1.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 33:

## **Chapter 19. School Improvement, Academically Unacceptable Schools and Subgroup Component Failure: District and State Level Tasks**

### **§1901. District Level Tasks**

A. For all schools in school improvement, Academically Unacceptable Schools, and schools in Subgroup Component Failure, districts shall:

1. submit to SBESE by February 1st of each year a status report regarding the implementation of all remedy and sanction requirements and activities in each of their school improvement schools, Academically Unacceptable Schools, and schools in Subgroup Component Failure;

2. when requested by the LDE, assign a District Assistance Team (DAT) to assist in the development of the School Improvement Plan according to the guidelines established by the Louisiana Department of Education that include:

A.2.a. - A.6. ...

- B. Districts with schools in AUS 2 and/or SI2 must: continue to adhere to the requirements of schools as described in §1901 and Chapter 16;

2. if desired, enter into partnership with the LDE to provide a distinguished educator or turn around specialist as listed in Chapter 16;

3. offer supplemental educational services for Title I schools;

4. submit to SBESE a written response by the local school board to the DE's annual report no later than 45 days subsequent to receiving the DE's report. Failure to respond to these recommendations will result in the school being ineligible to receive the assistance of the DE.

5. assist schools with any additional requirements from the corrective action list in Chapter 16.

C. District's responsibilities for AUS3 and CA1 schools are to:

1. continue to adhere to the required remedies and sanctions from earlier levels;

D. District's responsibilities to AUS4 and CA2 schools are to:

1. continue to adhere to the required remedies and sanctions from earlier levels, where applicable;

2. if a district has any academically unacceptable schools and those schools' reconstitution plans are approved by the SBESE, the district shall implement the approved reconstitution plans and utilize the recalculated data from the end of the previous year, school performance scores and growth targets, provided by the state. If the reconstitution plans are not approved, the schools lose state funding;

3. assist all other AUS4 and CA2 schools in designing their alternate governance (Title I schools) or "Reconstitution Light" Plans (non-Title I schools) for submission to SBESE for approval.

E. District's Responsibilities to AUS5 and Restructuring schools are to:

1. assist all schools with implementation of their Reconstitution, alternate governance or "Focused Reconstitution" Plans.

F. District's Responsibilities to AUS6 schools are to continue to assist with implementation of Reconstitution Plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 31:1515 (July 2005), LR 33:

**Chapter 21. State-Level School Improvement, Academically Unacceptable Schools and Subgroup Component Failure Tasks**

**§2101. State Support at Each Level**

A. State's Responsibilities to Districts with Schools in School Improvement, and schools labeled AUS or for Subgroup Component failure as aligned with Chapter 16 levels of remedies and sanctions.

1 - 7. ...

8. provide an approved list of supplemental educational service providers;

9. ensure that external Scholastic Audits are completed for schools as funding is available. If funding is limited, schools will be prioritized from lowest SPS to highest SPS, and Scholastic Audits will be conducted in rank order until funding is exhausted;

10. may provide a distinguished educator to academically unacceptable schools to assist in the development and design of the reconstitution plan, as available; and

11. SBESE shall approve or disapprove reconstitution plans. If the SBESE approves the reconstitution plan, a partnership may be offered to the district for the assistance of a DE to support and assist with monitoring the implementation of the reconstitution plan for schools that fail to make adequate growth;

12. SBESE shall approve or disapprove alternate governance plans;

13. SBESE shall approve or disapprove "Focused Reconstitution" plans;

14. monitor the implementation of all schools' reconstitution/alternate governance plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 30:2745 (December 2004), LR 31:1516 (July 2005), LR 32:1027 (June 2006), LR 33:

**Chapter 23. Reconstitution/Alternate Governance Plans**

**§2301. Schools Requiring Reconstitution/Alternate Governance Plans**

A. Districts shall develop and submit reconstitution/alternate governance plans to the SBESE for approval by December 31st for schools as described in Chapter 16.

1. Reconstitution Plan: AUS schools.

a. - c. ...

2. Alternate Governance Plan—the alternate governance plan indicates how the district shall make significant changes in the school's staffing and governance to improve student academic achievement in the school to be able to make adequate yearly progress.

3. The Focused Reconstitution Plan will address the specific problems that warranted the CA2 label.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 31:1516 (July 2005), LR 31:2765 (November 2005), LR 33:

**Chapter 24. Recovery School District**  
**§2401. Recovery School District**

A. The Louisiana Legislature established the Recovery School District with the passage of R.S. 17:1990.

A school is eligible for the Recovery School District under any of the following conditions.

1. The LEA fails to submit a reconstitution plan for a school in AUS4 to BESE for approval.

2. A school's reconstitution plan is submitted to BESE but is deemed to be unacceptable.

3. A school and/or the LEA fails to comply with the terms of a BESE approved reconstitution plan.

A.4. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1028 (June 2006), amended LR 33:

**Chapter 25. School Choice**

**§2501. Schools Requiring Choice**

A. An LEA must develop a school choice policy for schools that are:

1. academically unacceptable;

2. Title I schools that:

a. have failed the subgroup component for one year;

b. must implement remedies for subgroup

component failure.

B. - C. 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 33:

**§2503. Student Eligibility**

A. An LEA must offer choice to all students in an eligible school until the school is no longer identified as AUS or for Subgroup Component Failure, i.e., the school passes the subgroup component for two consecutive years and/or is no longer academically unacceptable EXCEPT:

1. if an eligible student exercises the option to transfer to another public school, an LEA must permit the student to remain in that school until he or she has completed the highest grade in the school. However, the LEA is no longer obligated to provide transportation for the student after the end of the school year in which the student's school of origin is no longer identified for remedies and sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 33:

**§2505. Transfer Options**

A. - B.2. ...

C. Students may not transfer to any school that is academically unacceptable or that has been identified for school improvement 1 or higher for subgroup component failure.

D. If there are no schools to which students can transfer, parents must be notified that the child is eligible for choice. The notification will further indicate that no choice options are currently available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 33:

#### **Chapter 27. Supplemental Educational Services**

NOTE: BESE has submitted Bulletin 124 as Notice of Intent to the *Louisiana Register* for public review. This Chapter 27 (§2701.A-§2721.K) shall no longer be applied as Rule upon the final adoption of Bulletin 124.

#### **Chapter 33. New Schools and/or Significantly Reconfigured Schools**

##### **§3301. Inclusion of New Schools**

A. ...

B. When two or more schools are created from an existing school (e.g., grades 4-6 "split" from an existing K-6 structure, creating a K-3 school and a 4-6 school), the LEA must consult with the LDE prior to implementing such changes to determine how the impacted schools will retain reward and/or AUS or Subgroup Component Failure status and any sanctions, remedies, and funds (e.g., a 3-8 school in AUS 3 should retain the AUS3-status in both schools if it is reconfigured into a 3-5 and a 6-8 school and if all grade levels contributed to its poor performance). After this consultation, the LDE shall make all decisions regarding the effects of these changes on rewards, AUS and Subgroup Component Failure status, and sanctions for all schools effected by the changes and will notify the LEA of its decision.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:2765 (November 2005), LR 33:

##### **§3303. Reconfigured Schools**

A. Prior to any reconfiguration, the LDE will review the changes to school sites in the reconfiguration and will consult with the LEA on the effects that the reconfiguration will have on rewards and/or AUS or Subgroup Component Failure status. After this consultation, the LDE shall make all decisions regarding the effects of these changes on rewards, AUS or Subgroup Component Failure status, and sanctions for all schools effected by the changes and will notify the LEA of its decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 31:2765 (November 2005), LR 33:

#### **Chapter 35. Inclusion of Alternative Education Students**

##### **§3503. Option I**

A. The testing score, and beginning in 2008 with the Baseline SPS, the dropout, and graduation data for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's and district's accountability calculations for both the SPS and subgroup components. The alternative

school itself shall receive a "diagnostic" SPS, not to be used for rewards or corrective actions, if a statistically valid number of students were enrolled in the school at the time of testing.

B. Students included in the GED/Skills Option program will be included in school accountability. They will be required to take the 9th grade Iowa Test (beginning in 2006, the Iowa Test is replaced by the iLEAP) or participate in LEAP Alternate Assessment Level 1 or Level 2 (LAA 1 or 2) while enrolled. All programs will be considered Option I for alternative education purposes, and student test score data, and beginning in-2008 with the Baseline SPS, dropout, and graduation data will be sent back to the sending high schools and districts for accountability purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 32:1028 (June 2006), LR 33:

##### **§3507. Option Considerations**

A. - B.1. ...

C. An alternative school labeled AUS3 or higher may request some flexibility in obtaining assistance from either a Distinguished Educator (DE) or a team designed to address the special needs of the alternative school population, as long as the total costs of the team do not exceed that for the DE. Sample team members could include the following; social workers, psychologists, educational diagnosticians, and counselors, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 33:

#### **Chapter 37. Inclusion of Lab Schools and Charter Schools**

##### **§3701. Special Consideration of Lab and Charter Schools**

A. Such schools shall be included in the Louisiana Accountability System following the same rules that apply to traditional and/or alternative schools. The only exceptions are lab schools and Type 1, 2, 3 and 5 charter schools that are independent schools and cannot be paired or shared with another school grade level, and/or if there is no home-based district school to which a given student's scores can be returned if all three conditions for Option II cannot be met. Therefore, if they do not have the required grade levels and/or required minimum number of students, such schools cannot receive an SPS. However, if they meet the requirements for accountability under the subgroup component, these analyses will be conducted, and any AUS or Subgroup Component Failure and rewards decisions will be based on these results. If neither the SPS or subgroup component can be applied, the state shall publish the results from pre- and post-test student achievement results, as well as other relevant accountability data, as part of that school's report card and will include the results of these students in the aggregate state accountability report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 33:

**Chapter 39. Inclusion of Students with Disabilities**

**§3905. Inclusion of Alternate Assessment Results**

A. Beginning with the 2005-2006 Baseline SPS, and Subgroup AYP calculations, LEAP Alternate Assessment Level 1 and Level 2 shall be included in all SPS and Subgroup AYP calculations.

1. For the 2007 Baseline SPS and the 2008 Growth SPS, only, LAA 1 student test results will not be included.

B. - B.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 30:767 (April 2004), LR 31:2763 (November 2005), LR 33:254 (February 2007), LR 33:

**Family Impact Statement**

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, 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 111—The Louisiana School, District, and State Accountability System**

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0708#060

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students (LAC 28: CXV.2321)

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 revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2321.Carnegie Credit for Middle School Students. The elimination of §2321.E is necessary due to changes in the High Stakes policy approved when the passing score for the eighth grade LEAP changed to the Basic/Approaching Basic combination. The revision of §2321.F would allow students who are repeating the eighth grade due to failure of the math and/or English language arts components of LEAP to earn high school credit. The policy does not allow the students to earn high school credit in the content area they failed on LEAP.

**Title 28**

**EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 23. Curriculum and Instruction**

**§2321. Carnegie Credit for Middle School Students**

A. - D. ...

E. Students who are repeating the eighth grade because they have failed the mathematics and/or English language arts components of LEAP shall not take or receive Carnegie credit for any high school courses in a content area in which they scored *Unsatisfactory* on the eighth grade LEAP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:

**Family Impact Statement**

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, 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 Carnegie Credit for Middle School Students**

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

The implementation of changes requires no cost or savings to state or local governmental units. The revision to §2321 in Bulletin 741: Louisiana Handbook for School Administrators will accomplish the following:

The elimination of §2321 E is necessary due to changes in the High Stakes policy approved when the passing score for the eighth grade LEAP changed to the Basic/Approaching Basic combination.

The revision of §2321.F would allow students who are repeating the eighth grade due to failure of the math and/or English language arts components of LEAP to earn high school credit. The policy does not allow the students to earn high school credit in the content area they failed on LEAP.

#### 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 will be no costs or economic benefits to schools or school districts.

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

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0708#063

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Curriculum and Instruction  
(LAC 28: CXV: 2319, 2341, 2353, 2361, and 2363)

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 revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2319. High School

Graduation Requirements, §2341, English, §2353, Mathematics, §2361, Science, and §2363, Social Studies.

The revision to §2319, §2341, §2353, §2361, and §2363 in Bulletin 741, *Louisiana Handbook for School Administrators*, will accomplish the following:

- Increase the Carnegie credits needed for a diploma from 23 to 24 by requiring a fourth year of math for high school graduation beginning with the freshman class of '08-'09.
- Enroll all incoming freshmen in '08-'09 into the recommended LA Core 4 Curriculum which includes four units each of English, math, science, and social studies; one unit of visual arts, performing arts, or Fine Arts Survey; and two units of foreign language courses or 2 speech courses.

These revisions are the result of recommendations from the High School Redesign Commission. The additional math requirement is justified because today's jobs require more math skills. Success in college is directly affected by the level of math a student takes and whether a student takes math their senior year. The Louisiana Core 4 Curriculum represents the knowledge and skills that colleges and industry indicate are necessary to be successful.

### Title 28

### EDUCATION

#### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### §2319. High School Graduation Requirements

##### A. Standard Diploma

1. For incoming freshmen prior to 2008-2009, the 23 units required for graduation shall include 15 required units and 8 elective units; the elective units can be earned at technical colleges as provided in §2389.

2. For incoming freshmen in 2008-2009 and beyond, the 24 units required for graduation shall include 16 required units and 8 elective units for the Louisiana Core Curriculum, or 21 required units and 3 elective units for the Louisiana Core 4 Curriculum; the elective units can be earned at technical colleges as provided in §2389.

3. Beginning with incoming freshmen in 2008-2009, all ninth graders will be enrolled in the Louisiana Core 4 Curriculum.

a. After the student has attended high school for a minimum of two years, as determined by the school, the student, the student's parent, guardian, or custodian may request that the student be exempt from completing the Louisiana Core 4 Curriculum.

b. The following conditions shall be satisfied for consideration of the exemption of a student from completing the Louisiana Core 4 Curriculum.

i. The student, the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection) shall meet to discuss the student's progress and determine what is in the student's best interest for the continuation of his educational pursuit and future educational plan.

ii. During the meeting, the student's parent, guardian, or custodian shall determine whether the student will achieve greater educational benefits by continuing the Louisiana Core 4 Curriculum or completing the Louisiana Core Curriculum.

iii. The student's parent, guardian, or custodian shall sign and file with the school a written statement asserting their consent to the student graduating without completing the Louisiana Core 4 Curriculum and acknowledging that one consequence of not completing the Louisiana Core 4 Curriculum may be ineligibility to enroll in into a Louisiana four-year public college or university. The statement will then be approved upon the signature of the principal or the principal's designee.

iv. The student, the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection) shall jointly revise the Career Options Law Five-Year Plan.

c. The student in the Louisiana Core Curriculum may return to the Louisiana Core 4 Curriculum, in consultation with the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection).

d. After a student who is 18 years of age or older has attended high school for two years, as determined by the school, the student may request to be exempt from completing the Louisiana Core 4 Curriculum by satisfying the conditions cited in Subparagraph 3.b. with the exception of the requirement for the participation of the parent, guardian, or custodian, given that the parent/guardian has been notified.

B. In addition to completing a minimum of 23 Carnegie credits, students must pass the English language arts and mathematics components of the GEE and either the science or social studies portions of GEE to earn a standard high school diploma. For students with disabilities who have passed two of the three required components of the GEE and have exhausted all opportunities available through the end of the twelfth grade to pass the remaining required GEE component, that GEE component may be waived by the State Superintendent of Education if the Department of Education determines the student's disability significantly impacts his/her ability to pass the GEE component.

1. The English language arts and mathematics components of GEE shall first be administered to students in the tenth grade.

2. The science and social studies components of the graduation test shall first be administered to students in the eleventh grade.

3. Remediation and retake opportunities will be provided for students that do not pass the test. Students shall be offered 50 hours of remediation each year in each content area they do not pass. Refer to *Bulletin 1566: Guidelines for Pupil Progression*, and the addendum to *Bulletin 1566: Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program, Regular School Year*.

4. Students may apply a maximum of two Carnegie units of elective credit toward high school graduation by successfully completing specially designed courses for remediation.

a. A maximum of one Carnegie unit of elective credit may be applied toward meeting high school graduation requirements by an eighth grade student who has scored at the *Unsatisfactory* achievement level on either the English language arts and/or the mathematics component(s) of the eighth grade LEAP provided the student:

i. successfully completed specially designed elective(s) for LEAP remediation;

ii. scored at or above the *Basic* achievement level on those component(s) of the eighth grade LEAP for which the student previously scored at the *Unsatisfactory* achievement level.

C. Prior to or upon the student's entering the tenth grade, all LEAs shall notify each student and his/her parents or guardians of the requirement of passing GEE.

1. Upon their entering a school system, students transferring to any high school of an LEA shall be notified by that system of the requirement of passing GEE.

D. The Certificate of Achievement is an exit document issued to a student with a disability after he or she has achieved certain competencies and has met certain conditions. Refer to *Bulletin 1706: Regulations for the Implementation of the Children with Exceptionalities Act*.

E. Minimum Course Requirements for High School Graduation

1. For incoming freshmen prior to 2008-2009, the minimum course requirements for graduation shall be the following:

<b>English</b>	<b>4 units</b>
Shall be English I, II, and III, in consecutive order; and English IV or Business English.	
<b>Mathematics</b>	<b>3 units</b>
(Effective for incoming freshmen 2005-2006 and beyond.) All students must complete one of the following: <ul style="list-style-type: none"> <li>Algebra I (1 unit) or</li> <li>Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units) or</li> <li>Integrated Mathematics I (1 unit)</li> </ul> The remaining unit(s) shall come from the following: Integrated Mathematics II, Integrated Mathematics III, Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.	
(Effective for incoming freshmen 1997-98 through 2004-2005) Shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics	
<b>Science</b>	<b>3 units</b>
Shall be the following: <ul style="list-style-type: none"> <li>1 unit of Biology</li> <li>1 unit from the following physical science cluster: <ul style="list-style-type: none"> <li>Physical Science, Integrated Science, Chemistry I, Physics I, Physics of Technology I</li> </ul> </li> <li>1 unit from the following courses: <ul style="list-style-type: none"> <li>Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, an additional course from the physical science cluster, or a locally initiated science elective. <ul style="list-style-type: none"> <li>Students may not take both Integrated Science and Physical Science</li> <li>Agriscience I is a prerequisite for Agriscience II and is an elective course.</li> </ul> </li> </ul> </li> </ul>	
<b>Social Studies</b>	<b>3 units</b>
Shall be American History, 1/2 unit of Civics or AP American Government, 1/2 unit of Free Enterprise; and 1 of the following: World History, World Geography, Western Civilization, or AP European History.	
<b>Health Education</b>	<b>1/2 unit</b>

Physical Education	1 1/2 units
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of 4 units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Electives	8 units
TOTAL	23 units

2. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana Core Curriculum, the minimum course requirements for graduation shall be the following:

English	4 units
Shall be English I, II, and III, and English IV or Senior Applications in English	
Mathematics	4 units
Algebra I (1 unit) or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units) Geometry The remaining units shall come from the following: Algebra II, Financial Mathematics, Senior Applications in Math, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally initiated elective approved by BESE as a math substitute.	
Science	3 units
Shall be the following: 1 unit of Biology 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I, Physics of Technology I 1 unit from the following courses: Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, Anatomy and Physiology, an additional course from the physical science cluster, or a locally initiated elective approved by BESE as a science substitute. <ul style="list-style-type: none"> <li>Students may not take both Integrated Science and Physical Science</li> <li>Agriscience I is a prerequisite for Agriscience II and is an elective course.</li> </ul>	
Social Studies	3 units
Shall be American History, 1/2 unit of Civics or AP American Government, 1/2 unit of Free Enterprise; and 1 of the following: World History, World Geography, Western Civilization, or AP European History.	
Health Education	1/2 unit
Physical Education	1 1/2 units
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of 4 units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Electives	8 units
TOTAL	23 units

3. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following:

English	4 units
Shall be English I, II, III, and English IV	
Mathematics	4 units
Algebra I (1 unit) or Algebra I-Pt. 2 Geometry Algebra II The remaining unit shall come from the following: Financial Mathematics, Senior Applications in Math, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally-initiated elective approved by BESE as a math substitute.	

Science	4 units
Shall be the following: 1 unit of Biology 1 unit of Chemistry 2 units from the following courses: Physical Science, Integrated Science, Physics I, Physics of Technology I, Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, Anatomy and Physiology, or a locally initiated elective approved by BESE as a science substitute. <ul style="list-style-type: none"> <li>Students may not take both Integrated Science and Physical Science</li> <li>Agriscience I is a prerequisite for Agriscience II and is an elective course.</li> </ul> A student completing a Career and Technical Area of Concentration may substitute a BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the 4th required science unit	
Social Studies	4 units
Shall be the following 1/2 unit of Civics or AP American Government 1/2 unit of Free Enterprise 1 unit of American History 1 unit from the following: World History, World Geography, Western Civilization, or AP European History 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Law Studies, Psychology, Sociology, or African American Studies. A student completing a Career and Technical Area of Concentration may substitute a BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the 4th required social studies unit.	
Health Education	1/2 unit
Physical Education	1 1/2 units
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of four units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Foreign Language	2 units
Shall be 2 units in the same foreign language or 2 Speech courses	
Arts	1 unit
1 unit Fine Arts Survey or 1 unit of Art (§2333), Dance (§2337), Music (§2355), Theatre Arts (§2333), or Applied Arts. A student completing a Career and Technical Area of Concentration may substitute a BESE/Board of Regents approved IBC-related course from within the student's area of concentration for the required applied arts unit.	
Electives	3 units
TOTAL	24 units

#### F. High School Area of Concentration

1. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

a. Incoming freshmen prior to 2008-2009 can complete an Academic Area of Concentration by completing the current course requirements for the Tuition Opportunity Program for Students (TOPS) Opportunity Award.

b. Incoming freshmen in 2008-2009 and beyond can complete an Academic Area of Concentration by completing the course requirements for the LA Core 4 curriculum.

c. To complete a career Area of Concentration, students shall meet the minimum requirements for

graduation including 4 elective primary credits in the Area of Concentration and 2 related elective credits, including 1 computer/technology course. Areas of Concentration are identified in the Career Options Reporting System with each LEA designating the Career and Technical Education Areas of Concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement:

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1/2
Digital Media I, II	1 each

#### G. Academic Endorsement

1. Graduating seniors who meet the requirements for a standard diploma and satisfy the following performance indicators shall be eligible for an academic endorsement to the standard diploma.

a. Students graduating prior to 2010-2011 shall complete an Academic Area of Concentration. Students graduating in 2010-2011 and beyond shall complete the following curriculum requirements:

<b>English</b>	<b>4 units</b>
English I, II, III, and IV	
<b>Mathematics</b>	<b>4 units</b>
Algebra I (1 unit) or Algebra I-Pt. 2 Geometry Algebra II The remaining unit shall come from the following Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, or Discrete Mathematics	
<b>Science</b>	<b>4 units</b>
1 unit of Biology 1 unit of Chemistry 1 unit of advanced science from the following courses: Biology II, Chemistry II, Physics, or Physics II 1 additional science unit	
<b>Social Studies</b>	<b>4 units</b>
1/2 unit of Civics or AP American Government and Politics 1/2 unit of Free Enterprise 1 unit of American History 1 unit from the following: World History, World Geography, Western Civilization, or AP European History 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Economics, Law Studies, Psychology, Sociology, or African American Studies.	

<b>Health Education</b>	<b>1/2 unit</b>
<b>Physical Education</b>	<b>1 1/2 units</b>
NOTE: The substitution of JROTC is permissible.	
<b>Foreign Language</b>	<b>2 units</b>
Shall be 2 units in the same foreign language	
<b>Arts</b>	<b>1 unit</b>
1 unit Fine Arts Survey or 1 unit of Art (§2333), Dance (§2337), Music (§2355), Theatre Arts (§2333), or Applied Arts.	
<b>Electives</b>	<b>3 units</b>
<b>TOTAL</b>	<b>24 units</b>

b. Students shall pass all four components of GEE with a score of *Basic* or above, or one of the following combinations of scores with the English language arts score at *Basic* or above:

i. one *Approaching Basic*, one *Mastery* or *Advanced*, *Basic* or above in the remaining two; or

ii. two *Approaching Basic*, two *Mastery* or above.

c. Students shall complete one of the following requirements:

i. Senior Project;

ii. one Carnegie unit in an AP course with a score of three or higher on the AP exam;

iii. one Carnegie unit in an IB course with a score of four or higher on the IB exam; or

iv. three college hours of non-remedial, articulated credit in mathematics, social studies, science, foreign language, or English language arts.

d. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

e. Students shall achieve an ACT Composite Score of at least 23 or the SAT equivalent.

#### H. Career/Technical Endorsement

1. Students who meet the requirements for a standard diploma and satisfy the following performance indicators shall be eligible for a career/technical endorsement to the standard diploma.

a. Students graduating prior to 2010-2011 shall meet the current course requirements for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2010-2011 and beyond shall meet the course requirements for the Louisiana Core 4 Curriculum.

b. Students shall complete the career area of concentration.

c. Students graduating prior to 2009-2010 shall pass the English language arts, mathematics, science, and social studies components of the GEE 21 at the *Approaching Basic* level or above. Students graduating in 2009-2010 and beyond shall pass all 4 components of the GEE with a score of *Basic* or above OR one of the following combinations with the English language arts score at *Basic* or above:

i. one *Approaching Basic*, one *Mastery* or *Advanced*, and *Basic* or above in the remaining two;

ii. two *Approaching Basic*, two *Mastery* or above.

d. Students shall complete a minimum of 90 work hours of work-based learning experience related to the student's area of concentration (as defined in the *LDE Diploma Endorsement Guidebook*) OR senior project related to student's area of concentration with 20 hours of related work-based learning and mentoring and complete one of the following requirements:

i. industry-based certification in student's area of concentration from the list of industry-based certifications approved by BESE; or

ii. three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours in student's area of concentration.

e. Students shall achieve a minimum GPA of 2.5.

f. Students graduating prior to 2008-2009 shall achieve the current minimum ACT Composite Score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2008-2009 and beyond shall achieve a minimum ACT Composite Score (or SAT Equivalent) of 20 or the State ACT average (whichever is higher) or the Silver Level on the WorkKeys Assessment.

I. A Louisiana state high school diploma cannot be denied to a student who meets the state minimum high school graduation requirements; however, in those instances in which BESE authorizes an LEA to impose more stringent academic requirements, a school system diploma may be denied.

J. Each school shall follow established procedures for special requirements for high school graduation to allow each to address individual differences of all students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R. S. 17:183.2; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070, 3072 (December 2005), LR 32:1414 (August 2006), LR 33:431 (March 2007), LR 33:

**§2341. English**

A. Four units of English shall be required for graduation. They shall be English I, II, and III, and English IV, or Business English (for incoming freshmen prior to 2008-2009), or Senior Applications in English.

B. Students who score at the *Unsatisfactory* achievement level on the English language arts component of grade eight LEAP shall pass a high school remedial course in that content area before enrolling any English course in the Secondary Program of Studies for English meeting graduation requirements.

C. The English course offerings shall be as follows:

Course Title(s)	Units
English I, II, III, and IV	1 each
Business English (for incoming freshmen prior to 2008-2009)	1
Senior Applications in English	1
Reading I	1
Reading II	1
English as a Second Language (ESL) I, II, III, and IV	1 each

D. Only students who have limited English proficiency are permitted to enroll in English as a Second Language (ESL) courses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1295 (June 2005), amended LR 33:

**§2353. Mathematics**

A. Effective for 2008-2009 incoming freshmen, four units of mathematics shall be required for graduations. All students must complete the following:

1. Algebra I (1 unit) or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units)

2. Geometry. The remaining units shall come from the following:

a. Algebra II, Financial Mathematics, Senior Applications in Math, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally-initiated elective approved by BESE as a math substitute.

B. Effective for 2005-2006 to 2007-2008 incoming freshmen, three units of mathematics shall be required for graduation. All students must complete one of the following:

1. Algebra I (1 unit); or

2. Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or

3. Integrated Mathematics I (1 unit). The remaining unit(s) shall come from the following:

a. Integrated Mathematics II, Integrated Mathematics III, Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

C. For incoming freshmen 1997-98 to 2004-2005, the three required mathematics courses shall be selected from the following courses and may include a maximum of two entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

D. Students who score at the *Unsatisfactory* achievement level on the mathematics component of grade eight LEAP 21 shall pass a high school remedial course in mathematics before enrolling in any course in the Secondary Program of Studies for Mathematics.

1. Introductory Algebra/Geometry may be used as the high school remediation course for students who have been promoted to the ninth grade without having passed the mathematics component of grade eight LEAP.

E. Financial Mathematics may be taught by teachers certified in Business Education.

F. The Mathematics course offerings shall be as follows:

Course Title(s)	Units
Advanced Mathematics I, II	1 each
Algebra I, II	1 each
Algebra I—Part 1	1
Algebra I—Part 2	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I, II, III	1 each
Introductory Algebra/Geometry (Remediation Elective)	1
Pre-Calculus	1
Probability and Statistics	1
Senior Applications in Math	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 33:

**§2361. Science**

A. Effective for incoming freshmen 1999-2000 and thereafter, the science graduation requirements shall be as follows:

1. 1 unit of Biology;
2. 1 unit from the following physical science cluster:
  - a. Physical Science;
  - b. Integrated Science;
  - c. Chemistry I;
  - d. Physics I'
  - e. Physics of Technology I;
3. 1 unit from the following courses:
  - a. Aerospace Science;
  - b. Biology II;
  - c. Chemistry II;
  - d. Earth Science;
  - e. Environmental Science;
  - f. Physics II;
  - g. Physics of Technology II;
  - h. Agriscience II (See paragraph (C) below.);
  - i. Anatomy and Physiology;
  - j. an additional course from the physical science cluster, or
  - k. a locally initiated science elective approved by the DOE.

B. Students may not take both Integrated Science and Physical Science.

C. Agriscience I is a prerequisite for Agriscience II and is an elective course.

D. The Science course offerings shall be as follows:

Course Title(s)	Units
Aerospace Science	1
Agriscience II	1
Anatomy and Physiology	1
Biology I, II	1 each
Chemistry I, II	1 each
Earth Science	1
Environmental Science	1
Integrated Science	1
Physical Science	1
Physics I, II	1 each
Physics of Technology I, II	1 each

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1297 (June 2005), amended LR 33:

**§2363. Social Studies**

A. Three units of social studies shall be required for graduation. They shall be American History, 1/2 unit of Civics or AP American Government, 1/2 unit of Free Enterprise; and 1 of the following: World History, World Geography, Western Civilization, or AP European History.

B. The Social Studies course offerings shall be as follows:

Course Title(s)	Units
American Government	1
American History	1
Civics	1
Economics	1
Free Enterprise	1/2
Law Studies	1
Psychology	1
Sociology	1
AP European History	1
African American Studies	1

C. Economics may be taught by a teacher certified in business education.

D. Free Enterprise shall include instruction in personal finance. Such instruction shall include but shall not be limited to the following components:

1. income;
2. money management;
3. spending and credit;
4. savings and investing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:274-274.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1298 (June 2005), amended LR 31:3072 (December 2005), LR 33:000 (March 2007), LR 33:

**Family Impact Statement**

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, 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—Curriculum and Instruction**

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for  
School Administrators**

**Chapter 11. Student Services**

**§1145. School Health Forms**

A. Effective August 2007, R.S. 40:5.12. requires all LEAs to implement the use of the standardized school health forms to eliminate the duplication of information submitted to schools and school nurses relative to health information and screenings, allergies, illnesses, sports physicals, medication administration, and prescribed procedures.

B. The most current version of the school health forms shall replace all other forms used to obtain health information, including previously piloted versions of these forms. These forms shall not be changed or altered in any manner.

C. The following is a brief description of each form.

1. School Entrance and General Health Exam Form/LHSAA Medical History Evaluation—for all sports physicals and/or other health evaluations provided to school nurses and school systems. Exceptions: Physicians may continue to utilize the original LHSAA Sports Physical Form in performing sports physicals without sanctions for non-compliance.

2. Physician's Authorization for Special Health Care—for any procedure orders, i.e., blood glucose monitoring, catheterization, etc., prescribed by a licensed provider that a student must receive during the school day.

3. Medication Order—for medication orders prescribed by a licensed provider that a student must receive during the school day.

4. Health Information—for pertinent health and emergency contact information provided by parents/legal guardians to the school district.

5. Authorization for Release of Confidential Information—required to be signed by parent/legal guardian before health information can be shared between the LEA and health care providers, i.e., hospital, physician, service agency, school RN, and/or other health provider.

D. These forms will be made available for download via the internet on the Louisiana DOE and the Louisiana Department of Health and Hospitals web sites.

E. The DOE, in collaboration with the Department of Health and Hospitals/Office of Public Health, will review the school health forms bi-annually and make revisions as needed.

F. Each LEA shall be monitored through the Department's NCLB Consolidated Compliance Monitoring process. LEAs that fail to implement the use of the standardized school health forms may be cited for non-compliance and requested to submit a corrective action plan.

AUTHORITY NOTE: Promulgated in accordance with R.S.40:5.12.; 20 USCS 6301, et seq. and 20 USCS 1232.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

**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,

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

The implementation of changes requires no cost or savings to state or local governmental units. The revision to §2319 §2341, §2353, §2361, and §2363 in Bulletin 741: Louisiana Handbook for School Administrators will accomplish the following:

Increase the Carnegie credits needed for a diploma from 23 to 24 by requiring a fourth year of math for high school graduation beginning with the freshman class of '08-'09.

Enroll all incoming freshmen in '08-'09 into the recommended LA Core 4 Curriculum which includes four units each of English, math, science, and social studies; one unit of visual arts, performing arts, or Fine Arts Survey; and two units of foreign language courses or two speech courses.

**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 will be no costs or economic benefits to schools or school districts.

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

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Secretary  
Management and Finance  
0708#061

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School  
Administrators—School Health Forms (LAC 28: CXV.1145)

Notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §1145.School Health Forms. These revisions were proposed by the Department of Education, in conjunction with the Department of Health and Hospitals, under the authority of R.S. 40:5.12, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed Rule will establish standardized health forms which are designed to eliminate the duplication of information submitted to schools and school nurses relative to health information and screenings, allergies, illnesses, sports physicals, medication administration, and prescribed procedures.

The proposed Rule should have an overall positive impact on the health of school aged children in that the Rule will ensure uniformity in the documentation of medical information submitted to schools and school nurses.

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 996—Standards for Approval of Teacher Education Programs (LAC 28:XLV.205 and 207)

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? Yes

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, 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—School Health Forms**

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

There is no estimated cost (savings) to the state or local governmental units.

This is a revision to Bulletin 741 which has incorporated State law changes that requires implementation of standardized School Health Forms. There will be no costs to DOE due to the fact that the Bulletin will be on the website and can be downloaded and there will be a link to DHH website to access the school health forms which can also be downloaded.

The estimated cost for printing this policy change and the fiscal and economic impact statement in the Louisiana Register is approximately \$150. Funds are currently budgeted for this purpose.

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

There will be no estimated 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)

There will be no 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.

Beth Scioneaux  
Deputy Superintendent  
0708#062

H. Gordon Monk  
Legislative Fiscal Officer  
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 revisions to *Bulletin 996—Standards for Approval of Teacher Education Programs*: §205. Application for Second-Stage Approval and §207. Notification of Intent to Seek Full State Approval and/or Accreditation by the National Council for the Accreditation of Teacher Education (NCATE). The proposed language clarifies the process of moving from second-stage approval to national accreditation or state approval by new or reinstated public and private teacher preparation units.

#### Chapter 2. Preliminary Approval or Second-Stage Approval for New or Reinstated Public and Private Teacher Preparation Units

##### §205. Application for Second-Stage Approval

A. Second-stage approval authorizes the institution to recommend candidates for certification, under limits stipulated in the conditions, for a period of one to three years.

B. Before the termination of second-stage approval, the unit shall present evidence that it has met preconditions to seek full state approval and/or national accreditation or shall request that second-stage approval be extended. The State Board of Elementary and Secondary Education (SBESE) may grant only one such extension, for a period of one year, when problems are identified that require solution prior to notification of intent to seek full state approval and/or national accreditation. The application for second-stage approval must include the following items:

1. a narrative describing the institutional and teacher education unit mission, reflecting the teacher education unit as an integrated and integral part of the university, and reflecting a common mission of all colleges (e.g., College of Education, College of Arts/Sciences, etc.) within the institution responsible for the preparation of teachers. The narrative should specify beliefs that drive the institution and unit and may include the knowledge bases from which these beliefs developed;

2. a written description of the professional education unit that is primarily responsible for the preparation of teachers and other professional educational personnel. This may be a chart or a narrative that specifies all professional education programs offered by the institution and degrees awarded for each program, and an organizational chart showing the unit's relationship to other administrative units within the institution;

3. evidence that a dean, director, or chair is officially designated to represent the unit and has been assigned authority and responsibility for its overall administration and operation (e.g., a job description for the head of the professional education unit);

4. evidence of written policies and procedures that guide unit operation, including policies or procedures pertaining to candidates. This may be submitted as hard copy (e.g., catalogs, handbooks) or as instructions for accessing a website;

5. response to Louisiana Specific Standards /Rules/Guidelines, including Title 17 of the Louisiana Revised Statutes, Sections 7.1, 7.2, to ensure that the unit is meeting state law, that courses reflect content standards, that field experiences are included, that admissions requirements are met, etc.;

6. a description of the unit's system of monitoring and evaluating its candidates, programs, operations, and the performance of its graduates. This will reflect how the unit will assess programs, unit effectiveness, and candidates as well as how the unit will provide follow-up data on its graduates;

7. instrument(s) for assessing candidates for admission to and exit from the teacher preparation program. This would include requirements for entrance to teacher education programs, through transition points, and for successful program completion as well as procedures for remediation, if necessary;

8. full budget report for the implementation of programs, including internal and external sources of funding, and including both hard and soft monies;

9. evidence of submission for state approval of all certification programs offered at the institution. By progressing through the full program approval process, programs will become sanctioned by the Louisiana Department of Education and the Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2453 (November 2004), amended LR 33:

**§207. Notification of Intent to Seek Full State Approval and/or Accreditation by the National Council for the Accreditation of Teacher Education (NCATE)**

A. A minimum of six months prior to the end of second-stage approval, the institution seeking NCATE accreditation must submit an "Intent to Seek NCATE Accreditation" form to NCATE, with a copy sent to the Division Director, Certification and Preparation, Louisiana Department of Education. For universities seeking state approval only, a letter from the institution verifying its intent to seek full state approval must be submitted to the Division Director, Certification and Preparation, Louisiana Department of Education.

B. On or before the end of second-stage approval, the unit must meet requirements to satisfy NCATE preconditions as verified by NCATE or the Louisiana Department of Education. For those institutions seeking NCATE accreditation, a copy of the verification from NCATE must be submitted to the Division Director, Certification and Preparation, Louisiana Department of Education. For institutions seeking state approval only, the unit's preconditions must be sent to the Division Director, Certification and Preparation, Louisiana Department of Education for review. The department will notify the unit when preconditions have been met.

C. Within three years or less from the time at which an institution is notified that preconditions have been met, the unit must complete an NCATE visit or successfully meet state and NCATE standards through a state-only visit to become eligible for full state approval of its teacher education unit.

D. During the time between verification that preconditions have been met, the visit has been held, and national accreditation or state approval has been authorized, the institution must follow all NCATE and state protocols and timelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2454 (November 2004), amended LR 33:

**Family Impact Statement**

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, 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 996—Standards for Approval of  
Teacher Education Programs**

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

The policy revises Bulletin 996, *Standards for Approval of Teacher Education Programs*, Chapter 2, regarding policy guidelines for preliminary approval and second-stage approval of new or reinstated public and private teacher preparation units. 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 affect persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0708#064

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Bylaws—Committee Membership  
(LAC 28:V.101, 105 and 113)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its bylaws (R.S. 17:3021-3025 and R.S. 17:3048.1). This rulemaking will amend Sections 101, 105 and 113 of the by-laws to revise the definition of "Assistant Executive Director", to provide a definition for "Deputy Executive Director", to revise the composition of the executive staff and to update the manner of delegation of authority within the Office of Student Financial Assistance.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0886NI)

**Title 28  
EDUCATION**

**Part V. Student Financial Assistance—Higher  
Education Loan Program**

**Chapter 1. Student Financial Assistance Commission**

**Bylaws**

**§101. Definitions and Authority**

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

*Assistant Executive Director* (as used in these bylaws)—those persons appointed in the unclassified service as assistants to the executive director.

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*Deputy Executive Director* (as used in these bylaws)—the principal assistant to the executive director.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), amended LR 24:1263 (July 1998), LR 26:1993 (September 2000), LR 33:435 (March 2007), LR 33:

**§105. Officers of the Commission and Executive Staff**

A.1. - B. ...

C. Executive Staff. The executive staff of the commission shall include the incumbent of those positions within the Office of Student Financial Assistance so

designated by the executive director and will normally be composed of the executive director, the deputy executive director, the assistant executive directors, the general counsel, the fiscal officer and the directors of the divisions of the office, and such other personnel as may be required for the efficient performance of the functions of the commission. The executive staff shall be tasked, directed and supervised by the executive director.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), amended LR 24:1263 (July 1998), LR 33:

**§113. Rights Duties and Responsibilities of the  
Executive Staff of the Commission**

A. Executive Staff of the Commission

1. The executive staff shall be tasked, directed and supervised by the executive director.

A.2. - B.7. ...

C. Deputy Executive Director. The deputy executive director shall be the assistant executive director nominated by the executive director and confirmed by the commission to serve as the principal assistant to the executive director. He/She shall be responsible to the executive director for the effective performance of all duties assigned by the executive director, in accordance with the policies, rules, regulations, directives and memoranda issued by the executive director and the commission.

D. Assistant Executive Directors. The assistant executive directors shall be nominated by the executive director and confirmed by the commission. The assistant executive directors shall serve as assistants to the executive director. He/She shall be responsible to the executive director, and the deputy executive director in the absence of the executive director, for the effective performance of all duties assigned by the executive director, in accordance with the policies, rules, regulations, directives and memoranda issued by the executive director and the commission.

E. Directors of Divisions

1. There shall be a director for each division of the Office of Student Financial Assistance, appointed by the executive director in accordance with state civil service laws, rules and regulations. Under the direction and authority of the executive director and the rules of the commission, each director shall administer the division for which he/she is appointed.

2. As the administrative head of a division, the director shall be responsible to the executive director for planning, supervising, directing, administering and executing the functions and programs assigned to the division in accordance with all applicable laws, rules, regulations, policies, directives, and budgets.

3. The directors may invite members of his/her administrative staff to aid him in his/her presentations to the commission.

F. Delegation of Authority. In the absence of the executive director, the deputy executive director, as delegated by the executive director, will assume the duties of the executive director during his/her absences. In the event both the executive director and the deputy executive director are absent, the executive director will appoint an incumbent

of the assistant executive director positions to assume the duties of the executive director.

G. Recording Secretary. The executive director shall appoint a recording secretary whose duties shall include giving or causing to be given notice of all meetings of the commission and its committees as required by the Administrative Procedure Act or these bylaws, to record and prepare the minutes of all commission meetings and meetings of its committees and to maintain and provide for the safekeeping of all minutes and other official documents of the commission. The recording secretary shall have the authority to provide copies of the official records of the commission as required by the public records laws of the state of Louisiana or as otherwise directed by the commission or the executive director and to certify the authenticity of such records and the signatures of members of the commission, the executive director or others acting in their official capacity on behalf of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:812 (September 1996), amended LR 24:1265 (July 1998), LR 25:654 (April 1999), LR 25:1091 (June 1999), LR 27:1218 (August 2001), LR 33:

Interested persons may submit written comments on the proposed changes (SG0886NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, 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—Committee Membership**

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

The proposed rule details a reorganization of the Office of Student Financial Assistance's unclassified executive staff with a reallocation of current authorized positions and a slight change in defined duties. There are no implementation costs or savings to state or local governmental units due to the proposed changes.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

There are no estimated effects on economic benefits to directly affected persons or non-governmental groups resulting from these measures.

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

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

George Badge Eldredge  
General Counsel  
0708#017

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## **NOTICE OF INTENT**

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

#### **Scholarship/Grant Programs—Dual Enrollment (LAC 28:IV.Chapter 14)**

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).

This rulemaking will add Chapter 14 to the Commission's Scholarship/Grants Rules to implement the Louisiana Dual Enrollment Program. The program will provide Louisiana public high school students with an incentive to prepare for college or for employment. The program allows high school students to dually enroll in postsecondary academic courses, enrichment/development courses, and work skills courses. The program will pay participating postsecondary institutions up to \$300 per course at \$100 per credit hour, for each student who meet the program requirements and participated in the program.

The text of this proposed Rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

#### **Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0890NI)

Interested persons may submit written comments on the proposed changes (SG0890NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, 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—Dual Enrollment**

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

Act 18 (HB1) of the 2007 Regular Session provides \$4.25 million through an interagency transfer to OSFA from the Board of Regents to support the Dual Enrollment Program. This program will provide funding to Louisiana public postsecondary institutions that enroll high school students in academic, enrichment and work skills courses. The program has been implemented in a manner such that future participation is subject to the appropriation of funding to support the program. Additional funding for the out years will be addressed during the budgeting process with the Board of Regents. It is assumed that this level of funding will continue for subsequent years.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

Additional students will attend an in-state school to further their education. The higher level of education or technical training for students affected by these proposed changes will have a positive impact on their earning potential and make them more marketable in the job market, thus eligible for higher paying jobs. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

An increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge  
General Counsel  
0708#012

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Scholarship/Grant Programs—Eligibility  
(LAC 28:IV:301, 703, and 803)

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).

This rulemaking implements Acts 372 and 412 of the 2007 Regular Session by providing alternative residency requirements for certain dependents of retired military personnel; by extending alternative initial eligibility requirements for students displaced by Hurricanes Katrina and Rita who graduate in 2007 from out-of-state high schools with a Louisiana Distance Diploma; and by changing the initial eligibility requirements for the TOPS Performance Award and TOPS Honors Award for those students who complete the twelfth grade level of a home study program approved by the Board of Elementary and Secondary Education or graduate from an eligible Louisiana high school in 2008 and later.

This rulemaking will also implement the recommendations of the Board of Regents and the Board of Elementary and Secondary Education to replace Speech Debate as an equivalent of Fine Arts Survey in the TOPS core curriculum with Speech III and Speech IV and to delete General Science as an equivalent to Physical Science.

The text of this proposed Rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

**Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0888NI)

Interested persons may submit written comments on the proposed changes (SG0888NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, 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**

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

Acts 372 and 412 of the 2007 Regular Session added new alternative initial eligibility requirements as well as relaxing certain requirements that will likely increase the number of students qualifying for a TOPS award. Since the major changes will not become effective until 2008, the cost for the 2007-2008 fiscal year is estimated to be \$144,527 with the State General Fund being the source of funding. The cost is projected to rise to \$933,964 for the 2008-2009 State Fiscal Year and \$1,529,921 for 2009-2010.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

Additional students will qualify for a TOPS award and many will attend an in-state school to further their education. The higher level of education or technical training for students affected by these proposed changes will have a positive impact on their earning potential and make them more marketable in the job market, thus eligible for higher paying jobs. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

An increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge  
General Counsel  
0708#015

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Scholarship/Grant Programs—Louisiana Go Grants  
(LAC 28:IV.Chapter 12)

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).

This rulemaking will add Chapter 12 to LASFAC's Scholarship/Grants Rules to implement the Louisiana GO Grant Program. The program will provide \$15 million in need-based aid to Louisiana students in state fiscal year 2007-2008. The program was reviewed and approved by both the Senate Committee on Education and the House

Committee on Education on April 12, 2007, and \$15 million has been included in the agency's budget for the 2007-2008 state fiscal year.

The text of this proposed Rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

#### Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0889NI)

Interested persons may submit written comments on the proposed changes (SG0889NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, 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 Louisiana Go Grants

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

Act 18 (HB1) of the 2007 Regular Session provides \$15 million in direct appropriation to OSFA to support the Louisiana Go Grant Program. This program will add a missing need based student financial aid component to the state's financial aid plan to support nontraditional and low income students who need additional aid to afford the cost of gaining skills or education in order to qualify and compete for better paying jobs. Additional funding for the out years will be addressed during the budgeting process with the Board of Regents and the Legislature. The Board of Regents estimates that the cost of the program will grow over time from \$24.25 million for the 2008-09 State Fiscal Year to \$33.2 million in 2009-10, \$42.0 million in 2010-11, \$48.5 million in 2010-12, and \$53.2 million in 2012-13.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

Students with financial need will gain the ability with the assistance of Louisiana Go Grants to afford the costs to attend an in-state school to further their education. The higher level of education or technical training for students affected by these proposed changes will have a positive impact on their earning potential and make them more marketable in the job market, thus eligible for higher paying jobs. This will provide Louisiana employers a better educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

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

An increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge  
General Counsel  
0708#014

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Tuition Trust Authority Office of Student Financial Assistance

Bylaws—Committee Membership  
(LAC 28:VII.101, 105 and 113)

The Louisiana Tuition Trust Authority announces its intention to amend its Bylaws (R.S. 17:3091 et seq.). This rulemaking will amend Sections 101, 105 and 113 of the bylaws to provide definitions for "Assistant Executive Director" and "Deputy Executive Director", to revise the composition of the executive staff and to update the manner of delegation of authority within the Office of Student Financial Assistance

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (ST0887NI)

### Title 28 EDUCATION

#### Part VII. Tuition Trust Authority

#### Chapter 1. Bylaws

#### §101. Definitions and Authority

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

*Assistant Executive Director* (as used in these bylaws)—those persons appointed in the unclassified service as assistants to the executive director.

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*Deputy Executive Director* (as used in these bylaws)—the principal assistant to the executive director.

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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 23:1653 (December 1997), amended LR 26:2269 (October 2000), LR 33:444 (March 2007), LR 33:

#### §105. Officers of the Authority and Executive Staff

- A. - B. ...  
C. Executive Staff

1. The executive staff of the authority shall include the incumbent of those positions within the Office of Student Financial Assistance so designated by the executive director and will normally be composed of the executive director, the deputy executive director, the assistant executive directors, the general counsel, and the directors of the designated divisions within the office; and such other personnel as may be required for the efficient performance of the functions of the authority.

- C.2. - D. ...

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 23:1654 (December 1997), amended LR 33:

#### §113. Rights, Duties and Responsibilities of Executive Staff of the Authority

- A. Executive Staff of the Authority

1. The executive staff shall be tasked, directed and supervised by the executive director.

2. Unless otherwise directed by the executive director, the executive staff shall attend the meetings of the authority and its various committees.

B. - B.6. ...

C. Deputy Executive Director. The deputy executive director shall be the assistant executive director nominated by the executive director and confirmed by the authority to serve as the principal assistant to the executive director. He/She shall be responsible to the executive director for the effective performance of all duties assigned by the executive director, in accordance with the policies, rules, regulations, directives and memoranda issued by the executive director and the authority.

D. Assistant Executive Directors. The assistant executive directors shall be nominated by the executive director and confirmed by the authority. The assistant executive directors shall serve as the principal assistants to the executive director. He/She shall be responsible to the executive director, and the deputy executive director in the absence of the executive director, for the effective performance of all duties assigned by the executive director, in accordance with the policies, rules, regulations, directives and memoranda issued by the executive director and the authority.

E. Delegation of Authority

1. In the absence of the executive director, the deputy executive director, as delegated by the executive director during his/her absences, will assume the duties of the executive director.

2. In the event both the executive director and the deputy executive director are absent, the executive director will appoint an incumbent of the assistant executive director positions to assume the duties of the executive director.

F. Directors of Divisions

1. There shall be a director for each division of the Office of Student Financial Assistance, appointed by the executive director in accordance with State Civil Service laws, rules and regulations.

2. Under the direction and authority of the executive director, each director shall administer the division for which he/she is appointed.

3. As the administrative head of a division, the director shall be responsible to the executive director for planning, supervising, directing, administering and executing the functions and programs assigned to the division in accordance with all applicable laws, rules, regulations, policies, directives, and budgets.

4. The directors may invite members of his/her administrative staff to aid in his/her presentations to the authority.

G. Recording Secretary. The executive director shall appoint a recording secretary whose duties shall include giving or causing to be given notice of all meetings of the authority and its committees as required by the Administrative Procedure Act or these bylaws, to record and prepare the minutes of all authority meetings and meetings of its committees and to maintain and provide for the safekeeping of all minutes and other official documents of the authority. The recording secretary shall have the authority to provide copies of the official records of the authority as required by the public records laws of the state

of Louisiana or as otherwise directed by the authority or the executive director and to certify the authenticity of such records and the signatures of members of the authority, the executive directors or others acting in their official capacity on behalf of the authority.

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 23:1656 (December 1997), amended LR 25:1092 (June 1999), LR 33:444 (March 2007), LR 33:

Interested persons may submit written comments on the proposed changes (ST0887NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, 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 Committee Membership

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

The proposed rule details a reorganization of the Office of Student Financial Assistance's unclassified executive staff with a reallocation of current authorized positions and a slight change in defined duties. There are no implementation costs or savings to state or local governmental units due to the proposed changes.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

There are no estimated effects on economic benefits to directly affected persons or non-governmental groups resulting from these measures.

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

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

George Badge Eldredge  
General Counsel  
0708#018

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Cooling Water Intake Structures and  
Application of Pesticides  
(LAC 33:IX.2315, 2501, 2707, 3113,  
4730, 4735, and 4761-4779)(WQ071ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been

initiated to amend the Water Quality regulations, LAC 33:IX.2315, 2501, 2707, 3113, 4730, 4735, and 4761-4779 (Log #WQ071ft).

This proposed rule is identical to federal regulations found in 71 FR 35006, June 16, 2006; 71 FR 68492, November 27, 2006; and 72 FR 37107-37109, July 9, 2007, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed rule adds language promulgated by the Environmental Protection Agency (EPA) on June 16, 2006, in 71 FR 35006, and on November 27, 2006, in 71 FR 68492. This rule establishes categorical Section 316(b) requirements for intake structures at new offshore oil and gas extraction facilities that have a design intake flow threshold of greater than 2 million gallons per day and that withdraw at least 25 percent of the water exclusively for cooling purposes. For existing Phase III facilities, EPA determined that uniform national standards are not the most effective way at this time to address cooling water intake structures at these facilities. Instead, EPA believes that it is better to continue to rely upon the existing National Pollutant Discharge Elimination System (NPDES) program, which implements Section 316(b) for existing facilities not covered under the Phase II rule on a case-by-case, best professional judgment basis. A federal action in 72 FR 37107-37109, July 9, 2007, suspends the requirements in 40 CFR 122.21(r)(1)(ii) and (r)(5), 125.90(a), (c), and (d), and 125.91-99, for cooling water intake structures at Phase II existing facilities, pending further rulemaking. The Phase II regulation addresses existing power utilities that use a cooling water intake structure to withdraw cooling water from waters of the state at a rate of 50 million gallons per day or greater. This rule suspends the equivalent state regulations in LAC 33:IX.2501.R.1.b and R.5 and Chapter 47.Subchapter B, with the exception of LAC 33:IX.4731.B. This rule also adds the exclusion for the application of pesticides from the NPDES permitting system under specific circumstances. This rule is required for the state to maintain NPDES delegation. The basis and rationale for this rule are to mirror the federal regulations to maintain equivalency.

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

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part IX. Water Quality**

#### **Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

#### **Chapter 23. Definitions and General LPDES Program Requirements**

##### **§2315. Exclusions**

A. The following activities do not require LPDES permits:

1. - 6. ...

7. discharges into a privately owned treatment works, except as the state administrative authority may otherwise require under LAC 33:IX.2707.M;

8. the application of pesticides consistent with all relevant requirements in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (i.e., those relevant to protecting water quality), in the following two circumstances:

a. the application of pesticides directly to waters of the state in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the state;

b. the application of pesticides to control pests that are present over waters of the state, including near such waters, where a portion of the pesticides will unavoidably be deposited to waters of the state in order to target the pests effectively, for example, when insecticides are aerially applied to a forest canopy where waters of the state may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

#### **Chapter 25. Permit Application and Special LPDES Program Requirements**

##### **§2501. Application for a Permit**

A. - Q.15. ...

R. Applications for Facilities with Cooling Water Intake Structures

1. Application requirements for facilities with cooling water intake structures are as follows.

a. New Facilities with New or Modified Cooling Water Intake Structures. New facilities (other than offshore oil and gas extraction facilities) with cooling water intake structures, as described in LAC 33:IX.Chapter 47.Subchapter A, shall submit to the state administrative authority for review the information required in Paragraphs R.2 (except Subparagraph R.2.d), 3, and 4 of this Section and LAC 33:IX.4713. New offshore oil and gas extraction facilities with cooling water intake structures, as described in LAC 33:IX.Chapter 47.Subchapter C, that are fixed facilities must submit to the Office of Environmental Services for review the information required in Paragraphs R.2 (except Subparagraph R.2.d), 3, and 4 of this Section and LAC 33:IX.4773 as part of their application. New offshore oil and gas extraction facilities that are not fixed facilities must submit to the Office of Environmental Services for review only the information required in Subparagraph R.2.d and Paragraph R.3 (except Subparagraph R.3.b) of this Section and LAC 33:IX.4773 as part of their application. Requests for alternative requirements in accordance with LAC 33:IX.4711 or 4771 shall be submitted with the permit application.

b. ...

2. Source Water Physical Data. These include:
  - a. ...
  - b. identification and characterization of the source water body's hydrological and geomorphological features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies;
  - c. locational maps; and
  - d. for new offshore oil and gas facilities that are not fixed facilities, a narrative description and/or locational maps providing information on predicted locations within the water body during the permit term in sufficient detail for the administrative authority to determine the appropriateness of additional impingement requirements in LAC 33:IX.4769.B.5.

3. - 3.e....

4. Source Water Baseline Biological Characterization Data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The state administrative authority may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan, as required in LAC 33:IX.4713.B.4 or 4773.B.3, should be revised. This supporting information must include existing data (if available). However, the data may be supplemented using newly conducted field studies, if the owner or operator chooses to do so. The information to be submitted must include:

4.a. - 5.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:229 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:

**Chapter 27. LPDES Permit Conditions**  
**§2707. Establishing Limitations, Standards, and Other Permit Conditions**

A.1. - B.2. ...

3. Requirements applicable to cooling water intake structures in Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 47.Subchapters A, B, and C.

C. - S. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000), LR 28:469 (March 2002), LR 28:1767 (August 2002), repromulgated LR 30:230

(February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Chapter 31. General LPDES Program Requirements**  
**§3113. Public Notice of Permit Actions and Public Comment Period**

A. - D.1.g. ...

h. requirements applicable to cooling water intake structures in Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 47.Subchapters A, B, and C; and

D.1.i. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:473 (March 2002), LR 28:1767 (August 2002), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Chapter 47. Criteria Applicable to Cooling Water Intake Structures under Section 316(b) of the Clean Water Act**

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

**Subchapter B. Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities under Section 316(b) of the Clean Water Act**

**§4730. Suspension of Portions of LAC 33:Part IX**

A. LAC 33:IX.2501.R.1.b and R.5 are hereby suspended.  
 B. LAC 33:IX.Chapter 47.Subchapter B, with the exception of LAC 33:IX.4731.B, is hereby suspended.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4735. What special definitions apply to this Subchapter?**

A. In addition to the definitions provided in LAC 33:IX.2313, the following special definitions apply to this Subchapter.

\* \* \*

*Existing Facility*—any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002 (or July 17, 2006, for an offshore oil and gas extraction facility), and any modification of, or any addition of, a unit at such a facility that does not meet the definition of a *new facility* in LAC 33:IX.4707.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:428 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Subchapter C. Requirements Applicable to Cooling Water Intake Structures for New Offshore Oil and Gas Extraction Facilities Under Section 316(b) of the Clean Water Act**

**§4761. What are the purpose and scope of this Subchapter?**

A. This Subchapter establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures at these facilities. These requirements are implemented through the Louisiana Pollutant Discharge Elimination System (LPDES) permits issued under Section 402 of the Clean Water Act (CWA).

B. This Subchapter implements Section 316(b) of the CWA for new offshore oil and gas extraction facilities. Section 316(b) of the CWA provides that any standard established pursuant to Section 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

C. New offshore oil and gas extraction facilities that do not meet the threshold requirements regarding amount of water withdrawn or percentage of water withdrawn for cooling water purposes in LAC 33:IX.4763.A must meet requirements determined by the administrative authority on a case-by-case, best professional judgment (BPJ) basis.

D. Nothing in this Subchapter shall be construed to preclude or deny the right of any state or political subdivision of a state or any interstate agency under Section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by federal law.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4763. Who is subject to this Subchapter?**

A. This Subchapter applies to a new offshore oil and gas extraction facility if it meets all of the following criteria.

1. It is a point source that uses or proposes to use a cooling water intake structure.

2. It has at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes as specified in Subsection C of this Section.

3. It has a design intake flow greater than 2 million gallons per day (MGD).

B. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to a water of the U.S.

C. The threshold requirement that at least 25 percent of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new offshore oil

and gas extraction facility meets the 25 percent cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25 percent of the total water withdrawn.

D. Neither this Subchapter nor Subchapter A of this Chapter applies to seafood processing vessels or offshore liquefied natural gas import terminals that are *new facilities* as defined in LAC 33:IX.4707. Seafood processing vessels and offshore liquefied natural gas import terminals must meet requirements established by the administrative authority on a case-by-case, best professional judgment (BPJ) basis.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4765. When must I comply with this Subchapter?**

A. You must comply with this Subchapter when an LPDES permit containing requirements consistent with this Subchapter is issued to you.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4767. What special definitions apply to this Subchapter?**

A. In addition to the definitions set forth in LAC 33:IX.4707, the following special definitions apply to this Subchapter.

*Cooling Water*—water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the *cooling water* is to absorb waste heat rejected from the process or processes used or from auxiliary operations on the facility's premises. *Cooling water* that is used in another industrial process either before or after it is used for cooling is considered process water rather than *cooling water* for the purposes of calculating the percentage of a new offshore oil and gas extraction facility's intake flow that is used for cooling purposes in accordance with LAC 33:IX.4763.C.

*Existing Facility*—any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002 (or July 17, 2006, for an offshore oil and gas extraction facility), and any modification of, or any addition of, a unit at such a facility that does not meet the definition of a *new facility* in LAC 33:IX.4707.

*Fixed Facility*—a bottom-founded offshore oil and gas extraction facility permanently attached to the seabed or subsoil of the outer continental shelf (e.g., platforms, guyed towers, articulated gravity platforms) or a buoyant facility securely and substantially moored so that it cannot be moved without a special effort (e.g., tension leg platforms, permanently moored semi-submersibles) and which is not intended to be moved during the production life of the well. This definition does not include mobile offshore drilling units (MODUs) (e.g., drill ships, temporarily moored semi-submersibles, jack-ups, submersibles, tender-assisted rigs, and drill barges).

*Minimum Ambient Source Water Surface Elevation*—the mean low tidal water level for estuaries or oceans. The mean low tidal water level is the average height of the low water over at least 19 years.

*New Offshore Oil and Gas Extraction Facility*—any building, structure, facility, or installation that meets the definition of a *new facility* in LAC 33:IX.4707 and is regulated by the Offshore or Coastal Subcategories of the Oil and Gas Extraction Point Source Category Effluent Guidelines incorporated by reference in LAC 33:IX.4903, but only if it commences construction after July 17, 2006.

*Offshore Liquefied Natural Gas (LNG) Import Terminal*—any facility located in waters defined in the federal regulations incorporated by reference in LAC 33:IX.4903 that liquefies, re-gasifies, transfers, or stores liquefied natural gas.

*Sea Chest*—the underwater compartment or cavity within the facility or vessel hull or pontoon through which sea water is drawn in (for cooling and other purposes) or discharged.

*Seafood Processing Vessel*—any offshore or nearshore, floating, mobile facility engaged in the processing of fresh, frozen, canned, smoked, salted, or pickled seafood or seafood paste, mince, or meal.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4769. As an owner or operator of a new offshore oil and gas extraction facility, what must I do to comply with this Subchapter?**

**A. Applicability**

1. The owner or operator of a new offshore oil and gas extraction facility must comply with:

a. the Track I requirements in Subsection B or the Track II requirements in Subsection C of this Section, if it is a fixed facility; or

b. the Track I requirements in Subsection B of this Section, if it is not a fixed facility.

2. In addition to meeting the requirements in Subsection B or C of this Section, the owner or operator of a new offshore oil and gas extraction facility may be required to comply with Subsection D of this Section.

**B. Track I Requirements for New Offshore Oil and Gas Extraction Facilities**

1. New offshore oil and gas extraction facilities that are fixed facilities shall:

a. comply with all of the requirements in Paragraphs B.3-9 of this Section if they do not employ sea chests as cooling water intake structures; or

b. comply with the requirements in Paragraphs B.3, 4, 5, 7, 8, and 9 of this Section if they employ sea chests.

2. New offshore oil and gas extraction facilities that are not fixed facilities must comply with the requirements in Paragraphs B.3, 5, 7, 8, and 9 of this Section.

3. You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s.

4. For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1 percent of the volume of the water column within the area centered

about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

5. You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if the administrative authority determines that:

a. there are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

b. based on information submitted by any fishery management agency or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the administrative authority that pass through the hydraulic zone of influence of the cooling water intake structure; or

c. based on information submitted by any fishery management agency or other relevant information, the proposed facility, after meeting the technology-based performance requirements in Paragraphs B.3 and 6 of this Section, would still contribute unacceptable stress to the protected species, or critical habitat of those species, or species of concern.

6. You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish.

7. You must submit the applicable application information required in LAC 33:IX.2501.R and 4773.B. If you are a fixed facility, you must submit the information required in LAC 33:IX.2501.R.2 (except 2.d), 3, and 4 and 4773.B as part of your application. If you are not a fixed facility, you must only submit the information required in LAC 33:IX.2501.R.2.d and 3 (except 3.b) and 4773.B as part of your application.

8. You must implement the monitoring requirements specified in LAC 33:IX.4775.

9. You must implement the recordkeeping requirements specified in LAC 33:IX.4777.

**C. Track II Requirements for New Offshore Oil and Gas Extraction Facilities.** The owner or operator of a new offshore oil and gas extraction facility that is a fixed facility and chooses to comply under Track II must comply with the following requirements.

1. You must demonstrate to the administrative authority that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the applicable requirements of Paragraph B.3 of this Section and, if your facility is a fixed facility without a sea chest, also Paragraph B.6 of this Section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, will be comparable to those which would result if you were to implement the requirements of Paragraph B.3 of this Section and, if your facility is a fixed facility without a sea chest, also Paragraph B.6 of this Section. In identifying such species, the administrative authority may consider information provided by any fishery management agency along with data and information from other sources.

2. For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1 percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

3. You must submit the applicable information required in LAC 33:IX.2501.R.2 (except 2.d), 3, and 4 and 4773.C.

4. You must implement the monitoring requirements specified in LAC 33:IX.4775.

5. You must implement the recordkeeping requirements specified in LAC 33:IX.4777.

D. You must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new offshore oil and gas extraction facility that the administrative authority deems are reasonably necessary to comply with any provision of federal or state law, including compliance with applicable state water quality standards (including designated uses, criteria, and antidegradation requirements).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

#### **§4771. May alternative requirements be authorized?**

A. Any interested person may request that alternative requirements less stringent than those specified in LAC 33:IX.4769 be imposed in the permit. The administrative authority may establish alternative requirements less stringent than the requirements in LAC 33:IX.4769 only if:

1. there is an applicable requirement in LAC 33:IX.4769;

2. the administrative authority determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local water resources other than impingement or entrainment or significant adverse impacts on energy markets;

3. the alternative requirement requested is no less stringent than justified by the wholly-out-of-proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets; and

4. the alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and any applicable requirement of federal or state law.

B. The burden is on the person requesting the alternative requirement to demonstrate that the alternative requirement should be authorized.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

#### **§4773. As an owner or operator of a new offshore oil and gas extraction facility, what must I collect and submit when I apply for my new or reissued LPDES permit?**

##### **A. General Application Requirements**

1. As an owner or operator of a new offshore oil and gas extraction facility, you must submit to the administrative authority a statement that you intend to comply with either:

a. the Track I requirements for new offshore oil and gas extraction facilities in LAC 33:IX.4769.B; or

b. if you are a fixed facility, the Track II requirements in LAC 33:IX.4769.C.

2. You must also submit the application information required by LAC 33:IX.2501.R and the information required in either Subsection B of this Section for Track I or, if you are a fixed facility that chooses to comply under Track II, Subsection C of this Section when you apply for a new or reissued LPDES permit in accordance with LAC 33:IX.2501.

B. Track I Application Requirements. To demonstrate compliance with Track I requirements in LAC 33:IX.4769.B, you must collect and submit to the administrative authority the information in Paragraphs B.1-3 of this Section.

1. Velocity Information. You must submit the following information to the administrative authority to demonstrate that you are complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure as required in LAC 33:IX.4769.B.3:

a. a narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

b. design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

2. Source Water Body Flow Information. If you are a fixed facility and your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements in LAC 33:IX.4769.B.4.

3. Design and Construction Technology Plan. To comply with LAC 33:IX.4769.B.5 and/or 6, if applicable, you must submit to the administrative authority the following information in a design and construction technology plan:

a. if the administrative authority determines that additional impingement requirements should be included in your permit:

i. information to demonstrate whether you meet the criteria in LAC 33:IX.4769.B.5;

ii. delineation of the hydraulic zone of influence for your cooling water intake structure; and

b. if required to install design and construction technologies and/or operational measures in accordance with

LAC 33:IX.4769.B.5 or 6, a plan explaining the technologies and measures you have selected. (Examples of appropriate technologies include, but are not limited to, increased opening to cooling water intake structure to decrease design intake velocity, wedgewire screens, fixed screens, velocity caps, location of cooling water intake opening in water body, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information, if applicable:

- i. a narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that you will use to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;
- ii. to demonstrate compliance with LAC 33:IX.4769.B.6, if applicable, a narrative description of the design and operation of the design and construction technologies that you will use to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and
- iii. design calculations, drawings, and estimates to support the descriptions provided in Clauses B.3.b.i and ii of this Section.

C. Track II Application Requirements. If you are a fixed facility and have chosen to comply with the requirements of Track II in LAC 33:IX.4769.C, you must collect and submit to the administrative authority the following information.

1. Source Water Body Flow Information. If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements in LAC 33:IX.4769.C.2.

2. Track II Comprehensive Demonstration Study. You must perform and submit the results of a comprehensive demonstration study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and confirm that the technology(ies) proposed and/or implemented at your cooling water intake structure reduces the impacts to fish and shellfish to levels comparable to those you would achieve were you to implement the applicable requirements in LAC 33:IX.4769.B.

a. To meet the comparable-level requirement, you must demonstrate that:

- i. you have reduced impingement mortality of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through the applicable requirements in LAC 33:IX.4769.B.3; and
- ii. if you are a facility without sea chests, you have minimized entrainment of entrainable life stages of fish and shellfish to 90 percent or greater of the reduction that would have been achieved through the applicable requirements in LAC 33:IX.4769.B.6.

b. You must develop and submit a plan to the administrative authority containing a proposal for how

information will be collected to support the study. The plan must include:

- i. a description of the proposed and/or implemented technology(ies) to be evaluated in the study;
- ii. a list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If you propose to rely on existing source water body data, the data must be no more than 5 years old, you must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement mortality and (if applicable) entrainment impacts, and you must provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;
- iii. any public participation or consultation with federal or state agencies undertaken in developing the plan; and

iv. a sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond), taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish), and sampling and data analysis methods.

c. You must submit documentation of the results of the study to the administrative authority. Documentation of the results of the study must include the following information.

i. Source Water Biological Study. The source water biological study must include:

(a) a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources, a determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment), and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding, and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(b) an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(c) a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

ii. Evaluation of Potential Cooling Water Intake Structure Effects. This evaluation must include:

(a) calculations of the reduction in impingement mortality and (if applicable) entrainment of all life stages of

fish and shellfish that would need to be achieved by the technologies you have selected to implement to meet requirements under Track II. To do this, you must determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements in LAC 33:IX.4769.B.3 and, for facilities without sea chests, LAC 33:IX.4769.B.6 of Track I at your site;

(b). an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. You must demonstrate that the technologies reduce impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish to a comparable level to that which you would achieve were you to implement the requirements in LAC 33:IX.4769.B.3 and, for facilities without sea chests, LAC 33:IX.4769.B.6 of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and (if applicable) entrainment based on the results of the source water biological study conducted in accordance with Clause C.2.c.i of this Section. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

iii. Verification Monitoring Plan. You must include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies and/or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement mortality and (if applicable) entrainment to the level documented in Clause C.2.c.i of this Section. The plan must describe the frequency of monitoring and the parameters to be monitored. The administrative authority will use the verification monitoring to confirm that you are meeting the level of impingement mortality and entrainment reduction required in LAC 33:IX.4769.C and that the operation of the technology has been optimized.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4775. As an owner or operator of a new offshore oil and gas extraction facility, must I perform monitoring?**

A. As an owner or operator of a new offshore oil and gas extraction facility, you will be required to perform monitoring to demonstrate your compliance with the requirements specified in LAC 33:IX.4769 or alternative requirements in LAC 33:IX.4771.

**B. Biological Monitoring**

**1. Facility Requirements**

a. Fixed facilities without sea chests that choose to comply with the Track I requirements in LAC 33:IX.4769.B.1 must monitor for entrainment. These facilities are not required to monitor for impingement, unless the administrative authority determines that the information

would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

b. Fixed facilities with sea chests that choose to comply with the Track I requirements LAC 33:IX.4769.B.1 are not required to perform biological monitoring unless the administrative authority determines that the information would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

c. Facilities that are not fixed facilities are not required to perform biological monitoring unless the administrative authority determines that the information would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

d. Fixed facilities with sea chests that choose to comply with the Track II requirements in LAC 33:IX.4769.C must monitor for impingement only. Fixed facilities without sea chests that choose to comply with Track II requirements must monitor for both impingement and entrainment.

2. Monitoring must characterize the impingement rates and (if applicable) entrainment rates of commercial, recreational, and forage base fish and shellfish species identified in the source water baseline biological characterization data required by LAC 33:IX.2501.R.4, identified in the comprehensive demonstration study required by LAC 33:IX.4773.C.2, or as specified by the administrative authority.

3. The monitoring methods used must be consistent with those used for the source water baseline biological characterization data required in LAC 33:IX.2501.R.4, those used by the comprehensive demonstration study required by LAC 33:IX.4773.C.2, or as specified by the administrative authority. You must follow the monitoring frequencies in Paragraphs B.4 and 5 of this Section for at least two years after the initial permit issuance. After that time, the administrative authority may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any seasonal variations in the species and numbers of individuals of those species that are impinged or entrained.

4. Impingement Sampling. You must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

5. Entrainment Sampling. If your facility is subject to the requirements of LAC 33:IX.4769.B.1.a, or if your facility is subject to LAC 33:IX.4769.C and is a fixed facility without a sea chest, you must collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the source water baseline biological characterization required by LAC 33:IX.2501.R.4 or the comprehensive demonstration study required in LAC 33:IX.4773.C.2. You must collect

samples only when the cooling water intake structure is in operation.

C. Velocity Monitoring. If your facility uses a surface intake screen system, you must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in LAC 33:IX.4769.B.3. If your facility uses devices other than surface intake screens, you must monitor velocity at the point of entry through the device. You must monitor head loss or velocity during initial facility startup and, thereafter, at the frequency specified in your LPDES permit, but no less than once per quarter.

D. Visual or Remote Inspections. You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct visual inspections at least weekly to ensure that any design and construction technologies required in LAC 33:IX.4769.B.5, B.6, C, and/or D are maintained and operated to ensure that they will continue to function as designed. Alternatively, you must inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4777. As an owner or operator of a new offshore oil and gas extraction facility, must I keep records and report?**

A. As an owner or operator of a new offshore oil and gas extraction facility you are required to keep records and report information and data to the administrative authority as follows.

1. You must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under LAC 33:IX.4773, and any compliance monitoring data submitted under LAC 33:IX.4775, for a period of at least three years from the date of permit issuance. The administrative authority may require that these records be kept for a longer period.

2. You must provide the following to the administrative authority in a yearly status report:

a. for fixed facilities, biological monitoring records for each cooling water intake structure as required by LAC 33:IX.4775.B;

b. velocity and head loss monitoring records for each cooling water intake structure as required by LAC 33:IX.4775.C; and

c. records of visual or remote inspections as required in LAC 33:IX.4775.D.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

**§4779. What must the administrative authority do to comply with the requirements of this Subchapter?**

A. Permit Application. The administrative authority must review materials submitted by the applicant in accordance with LAC 33:IX.2501.R, 4771, and 4773 at the time of the initial permit application and before each permit renewal or reissuance.

1. After receiving the initial permit application from the owner or operator of a new offshore oil and gas extraction facility, the administrative authority must determine applicable standards in LAC 33:IX.4769 or 4771 to apply to the new offshore oil and gas extraction facility. In addition, the administrative authority must review materials to determine compliance with the applicable standards.

2. For each subsequent permit renewal, the administrative authority must review the application materials and monitoring data to determine whether requirements, or additional requirements, for design and construction technologies or operational measures should be included in the permit.

3. For Track II facilities, the administrative authority must review the information collection proposal plan required by LAC 33:IX.4773.C.2.b. The facility may initiate sampling and data collection activities prior to receiving comment from the administrative authority.

B. Permitting Requirements. Section 316(b) requirements of the CWA are implemented for a facility through an LPDES permit. The administrative authority must determine, based on the information submitted by the new offshore oil and gas extraction facility in its permit application, the appropriate requirements and conditions to include in the permit based on the track (Track I or Track II), or alternative requirements in accordance with LAC 33:IX.4771, the new offshore oil and gas extraction facility has chosen to comply with. The following requirements must be included in each permit.

1. Cooling Water Intake Structure Requirements. At a minimum, the permit conditions must include the performance standards that implement the applicable requirements of LAC 33:IX.4769.B.3-6 and C.1 and 2 or LAC 33:IX.4771.

a. For a facility that chooses Track I, the administrative authority must review the design and construction technology plan required in LAC 33:IX.4773.B.3 to evaluate the suitability and feasibility of the technology proposed to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish. In the first permit issued, the administrative authority must include a condition requiring the facility to reduce impingement mortality and/or entrainment commensurate with the implementation of the technologies in the permit. Under subsequent permits, the administrative authority must review the performance of the technologies implemented and require additional or different design and construction technologies, if needed, to minimize impingement mortality and/or entrainment of all life stages of fish and shellfish. In addition, the administrative authority must consider whether more stringent conditions are reasonably necessary in accordance with LAC 33:IX.4769.D.

b. For a fixed facility that chooses Track II, the administrative authority must review the information submitted with the comprehensive demonstration study required in LAC 33:IX.4773.C.2 and evaluate the suitability of the proposed design and construction technology and/or operational measures to determine whether they will reduce both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that could be achieved through Track I. In addition, the administrative authority must review the verification monitoring plan required in LAC 33:IX.4773.C.2.c.iii and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies and operational measures meet the requirements in LAC 33:IX.4769.C.1. Under subsequent permits, the administrative authority must review the performance of the additional and/or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of LAC 33:IX.4769.B.3 and, if applicable, LAC 33:IX.4769.B.6.

c. If a facility requests alternative requirements in accordance with LAC 33:IX.4771, the administrative authority must determine if data specific to the facility meet the requirements in LAC 33:IX.4771.A and include requirements in the permit that are no less stringent than justified by the wholly-out-of-proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets.

2. Monitoring Conditions. At a minimum, the permit must require the permittee to perform the monitoring required in LAC 33:IX.4775. The administrative authority may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The administrative authority may require continued monitoring based on the results of monitoring done pursuant to the verification monitoring plan required in LAC 33:IX.4773.C.2.c.iii.

3. Recordkeeping and Reporting. At a minimum, the permit must require the permittee to report and keep records as required by LAC 33:IX.4777.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on September 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ071ft. Such

comments must be received no later than September 26, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ071ft. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

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## NOTICE OF INTENT

### Office of the Governor Board of Examiners of Certified Shorthand Reporters

Continuing Education (LAC 46:XXI.601-613, and 1301)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq. Notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters, proposes to adopt changes made to the continuing education Rule and to add a paragraph to the code of ethics Rule.

The proposed Rules are to become effective when approved.

### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXI. Certified Shorthand Reporters

#### Chapter 6. Continuing Education

#### §601. Continuing Education Requirement

A. The maintenance and continued validity of any license issued by the board shall be dependent upon the satisfactory performance and completion of those continuing education requirements as established and enforced herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:32 (January 1991), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

#### §603. Continuing Education Credits

A. Beginning January 1, 1991, and thereafter, each certificate holder shall be required to obtain at least 12 continuing education credits during each two-year continuing education cycle. Each continuing education cycle shall consist of two consecutive years beginning January 1 of the odd-numbered year and ending December 31 of the even-numbered year, inclusive. The board shall award one

continuing education credit for each half hour of instruction time.

B. Any certificate holder is exempt from the requirement of obtaining continuing education credits for the calendar year in which the certification is initially issued. If the certificate holder is certified in an odd-numbered year, the certificate holder shall be required to obtain at least six continuing education credits during the calendar year following the year in which the certification was issued. If the certificate holder is certified in an even-numbered year, the certificate holder shall be required to obtain at least 12 continuing education credits during the two calendar years following the year in which the certification was issued.

C. Any certificate holder who is or who becomes age 65 or older during a continuing education cycle is exempt from the requirement of obtaining continuing education credits.

D. The board may suspend or revoke the certification of any certificate holder who fails to satisfy and complete the continuing education requirements stated herein, pursuant to R.S. 37:2557.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:32 (January 1991), amended LR 20:412 (April 1994), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

#### **§605. Prohibited Excess Credits**

A. Any continuing education credit obtained in excess of 12 credits per reporting period shall not be applied to any subsequent or future continuing education reporting period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

#### **§607. Maintenance of Record**

A. Each certificate holder shall maintain a record of the satisfaction and completion of the continuing education credits required by the board.

B. On or before January 31 of each odd-numbered calendar year, each reporter issued a certificate by the board shall submit or cause to be submitted to the board a written record of continuing education credits earned by the reporter for the preceding two calendar years.

C. A certificate holder who teaches a course in which court reporters receive continuing education credit may receive three continuing education credits for each continuing education credit awarded to a reporter enrolled in the course. In order to receive credit for teaching activities, the certificate holder must submit to the continuing education committee the following: a copy of any promotional material or curriculum distributed to attendees, describing the course content; verification that the course was approved for continuing education credit in Louisiana; and a signed statement from the certificate holder attesting to the date and duration of training conducted by the certificate holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 17:578 (June 1991), LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

#### **§609. Continuing Education Guidelines**

A. The following general subject matter and enumerated continuing education credits may be approved by the board or, at the board's direction, by the continuing education committee, in the event the subject matter is germane to the professional competence of the certificate holder.

1. The board may approve seminars and workshops sponsored by the National Court Reporters Association (NCRA) or the National Verbatim Reporters Association (NVRA) at national, regional, state, or local meetings, by public institutions of higher learning, and by judicial organizations, including the following subjects:

- a. English;
- b. medical;
- c. legal;
- d. technical subjects presented by experts dealing with terminology and concepts encountered by the certificate holder during depositions and at trials;
- e. new developments and knowledge in the field directly related to making the record;
- f. general court and deposition procedures;
- g. general court and deposition transcript preparation;
- h. financial planning and administration;
- i. professionalism;
- j. office procedures and record-keeping
- k. ethics; or
- l. technology related to new developments in the field of court reporting.

2. The board may approve continuing education credit for courses conducted by universities and colleges. A certificate holder who has enrolled in an accredited university or college and has successfully completed an academic or technical course, the subject matter of which is consistent with §609(A)(1)(a-l) above, and who received a passing grade of C or better shall receive four C.E. credits per academic hour.

3. The board may recognize credits from other institutions and organizations giving continuing education courses if the course concerns subject matter directly related to enhancing the certificate holder's knowledge, ability, or competence to perform reporting duties.

4. The board may award 12 credits for the two-year C.E. cycle within which a certificate holder attains certification for the first time from a national association as follows:

- a. NCRA Registered Professional Reporter (RPR), Registered Merit Reporter (RMR), or Certified Realtime Reporter (CRR) certification; or
- b. NVRA Certified Verbatim Reporter (CVR), Certificate of Merit (CM), or Real-time Verbatim Reporter (RVR) certification.

B. A certificate holder will not receive C.E. credit unless the seminar, workshop, course, or other activity has been

approved by the board or, at the board's direction, by the continuing education committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

#### **§611. Activities Not Acceptable for Continuing Education Credits**

A. Completion of any certified pulmonary respiratory course will not be accepted for continuing education credits.

B. Attendance at or participation in tours, exhibits, entertainment, recreation, committee service, association business, home study, or on-line courses or seminars will not be accepted for continuing education credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 21:931 (September 1995), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

#### **§613. Provider Application Process**

A. A provider must submit the following information to the continuing education committee at least 90 days before the date of a proposed training event:

1. The date, time, and place where the training will be conducted;

2. A list and detailed description or agenda of the courses that will be taught, identifying for each course the number of minutes allocated to instruction time and the number of credit hours requested;

3. A description of the provider's experience and qualifications to conduct such training;

4. A description of the registration and course attendance procedures that will be used by the provider;

5. A copy of the evaluation form that will be distributed to participants at the end of the training to solicit their assessment of the program's educational value and effectiveness;

6. A copy of the provider verification form that will be given to each participant upon completion of the training, indicating the courses completed and credit hours awarded to that participant;

7. The names and qualifications of instructors, identifying which courses they will be teaching in the training; and

8. A signed statement from the provider agreeing to submit to the continuing education committee within 15 days after the training a list of certificate holders who attended all or a portion of the training event and the number of credit hours for which each is eligible, as well as a summary of the evaluation responses completed by participants in the training.

B. The continuing education committee will respond within 30 days after receiving a completed provider application, approving or denying continuing education credit for courses in the proposed training event. The committee may request further information or clarification

from the provider and may extend the 30-day period by the additional days required to receive and consider a response from the provider.

C. A provider may advertise the training as eligible for continuing education credit in Louisiana only after receiving approval from the continuing education committee.

D. Within 15 days after completion of the training, a provider must submit the following information to the continuing education committee:

1. A list of participants in the training, the courses each participant attended, and the credit hours awarded to each participant;

2. A summary of the evaluation forms completed by participants; and

3. A description of any problems encountered or complaints received during the training and the provider's plan for responding to such problems or complaints in this or any future training.

E. A provider who fails to comply with any continuing education requirements or commitments may be rendered ineligible to conduct training in Louisiana upon motion of the continuing education committee and approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

### **Chapter 13. Code of Ethics**

#### **§1301. Guidelines for Professional Practice**

A. - B.10. ...

C. When a deposition is taken, an original transcript must be produced by the reporter in a prompt manner and delivered to the noticing attorney, in satisfaction of the attorney's duty to serve as custodian of the records and in order to assure full compliance with the reporter's statutory and ethical obligations.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2553(A.),37:2554 and 37:2557(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 25:1215 (July 1999), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

#### **Family Impact Statement**

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

A public hearing will be held on August 24, 2007, from 11 a.m. to 1 p.m. in the State National Life Building, 263 Third Street, Third Floor Conference Room, Baton Rouge, LA 70801. Interested persons are invited to attend and submit oral comments on the proposed amendments.

Interested persons may submit comments in writing, to Phyllis Pool, Louisiana Board of Examiners of Certified Shorthand Reporters, P.O. Box 3257, Baton Rouge, LA 70821-3257.

Judge Guy P. Holdridge,  
Chairman

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

**RULE TITLE: Continuing Education**

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

The proposed rule change will not result in any implementation costs (or savings) to state or local governmental units other than those one-time costs directly associated with the publication of these rules.

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

There is no estimated effect on revenue collections of state or local governmental units associated with the proposed rule change.

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

The proposed rule change will benefit those persons 65 and older who will no longer have to obtain continuing education credits to maintain their license. On the other hand, there may be additional costs to out-of-state providers in regard to the provider application process.

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

The proposed rule change will likely result in a greater number of experienced reporters maintaining a current license.

Guy P. Holdridge,  
Chairman  
0708#055

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of Facility Planning and Control**

Louisiana Building Code (LAC 34:III.131)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of RS 39:121, the Division of Administration, Facility Planning and Control hereby gives notice of its intent to amend Title 34, Government Contracts, Procurement and Property Control, Part III. Facility Planning and Control, Chapter 1. Capital Improvement Projects to add Section 131, Louisiana Building Code for State Owned Buildings. These changes are the result of a review by Facility Planning and Control of the editions of the codes specified by RS 40:1722 and the most recent editions of these codes. This review has led to the determination that new editions of these codes will provide a higher standard than the currently referenced editions. Facility Planning and Control is, therefore, establishing the appropriate editions of these codes as the standards.

**Title 34**

**GOVERNMENT CONTRACTS, PROCUREMENT  
AND PROPERTY CONTROL**

**Part III. Facility Planning and Control**

**Chapter 1. Capital Improvement Projects**

**Sub Chapter A. Procedure Manual**

**§131. Louisiana Building Code**

A. RS 40:1277 establishes the Louisiana Building Code and directs that the following codes be established as the standards as minimum standards for this code. These codes shall be established as constituting the code in the editions indicated:

1. the Life Safety Code, Standard 101, 2003 Edition as published by the National Fire Protection Association;
2. Part XIV (Plumbing) of the State Sanitary Code as promulgated by the secretary of the Department of Health and Hospitals;
3. the International Building Code, 2006 Edition as published by the International Code Council;
4. the International Mechanical Code, 2006 Edition as published by the International Code Council;
5. the National Electric Code (NFPA No. 70) 2005 Edition as published by the National Fire Protection Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 33:

**Family Impact Statement**

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the Stability of the Family.
2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.
4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earnings and family budget.
5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.
6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit comments to William Morrison, Facility Planning and Control, P.O. Box 94095,

Baton Rouge, LA 70804-9095. Written comments will be accepted through September 10, 2007.

Jerry Jones  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Louisiana Building Code**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The proposed rule change will likely result in increased construction costs to the state which will likely range from \$1,000 to \$100,000 per project. Implementation of the new building code requires increased wind load and flood resistance that will increase the structural strength of the building and will typically result in an increase in costs. Maximum anticipated wind speed and flood potential vary across the state, consequently necessary structural improvements will vary depending on the location of the project.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule change will have no impact on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Increased workloads related to new building codes will likely result in increased fees for both designers and contractors. Increased fees will vary depending on each individual project.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule change will have no impact on competition and employment.

Jerry W. Jones  
Director  
0708#056

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT  
Office of the Governor  
Motor Vehicle Commission**

Advertising (LAC 46:V.Chapter 7)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 6, the Office of the Governor, Louisiana Motor Vehicle Commission, notice is hereby given that the Louisiana Motor Vehicle Commission proposes to repeal Chapter 7 and replace it with new regulations and language to clarify the Rule, put into the Rule customary procedures of the commission to assist its licensees in designing their advertising programs.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part V. Automotive Industry**

**Subpart 1. Motor Vehicle Commission**

**Chapter 7. Advertising**

**§701. Advertising; Dealer Name**

A. Dealers may advertise only under the name that appears on their franchise agreement and dealer license issued by the Motor Vehicle Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§703. General Prohibition**

A. A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§705. Specific Rules**

A. The violation of an advertising rule shall be considered by the commission as a prima facie violation of the Louisiana Motor Vehicle Commission Law. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the commission to be false, deceptive, or misleading shall be deemed violations of the Louisiana Motor Vehicle Commission Law, and shall also be considered violations of the general prohibition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§707. Definitions**

*Abbreviations*—using shortened terms for words or initials for groups of words. Commonly understood abbreviations, such as " '2DR' ", " 'AM/FM' ", " 'APR' ", " 'WAC' ", " 'DEMO' ", " 'EXEC' ", " 'DOC FEE' ", may be used. Trade industry abbreviations which are not commonly understood, such as " 'FTB' ", " 'A/R' ", " 'TOP' ", " 'POF' ", " 'DOC' " MAY NOT be used. This rule does not contain a list of all the abbreviations one may not use.

*Advertisement*—an oral, written, telecommunicated, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, letter, flyer, price tag, window sticker, banners, billboards, handbills, or on radio, the Internet, or via on-line computer service, or on television or on-hold messaging, any medium.

*Bait Advertisement*—an alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain leads to persons interested in buying or leasing merchandise

of the type advertised and to switch consumers from buying or leasing the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

**Balloon Payment**—any scheduled payment required by a consumer credit sale or consumer loan that is more than twice as large as the average of all prior scheduled payments except the down payment.

**Dealership Addendum**—a form which is to be displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer.

1. The addendum is to disclose:
  - a. that it is supplemental;
  - b. any added feature, service, equipment, part, or accessory charged and added by the dealership and the retail price therefore;
  - c. any additional charge to the manufacturer's suggested retail price (MSRP) such as additional dealership markup; and
  - d. the total dealer retail price.

2. The dealership addendum form shall not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.

**Demonstrator**—a new motor vehicle that is currently in the inventory of the automobile dealership and used or has been used primarily for test drives by customers and other dealership purposes and so designated by the dealership. Demonstrators may be advertised for sale as such only by an authorized dealer in the same make of motor vehicle.

**Disclaimer**—those words or phrases used to provide a clear understanding of any advertised statement, but not used to contradict or change the meaning of the statement.

**Disclosure**—a clear and conspicuous statement made in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. The disclosure may not contradict or be inconsistent with any other information with which it is presented. If the disclosure modifies, explains, or clarifies other information with which it is presented, or states "see dealership for details," then it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner.

1. An audio disclosure must be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it.
2. A visual disclosure for television must appear on the screen for a duration sufficient for a consumer to read and comprehend it.
3. In a print or internet advertisement or promotional material, including without limitation point of sale display or brochure materials directed to consumers, a disclosure must be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears. For purposes of these rules, qualifying terms and phrases will be

considered to be clearly, conspicuously and accurately set forth if they are:

- a. in bold print and type of such size that is capable of being read without unreasonable extra effort;
- b. expressed in terms that are understandable to the buying public; and
- c. in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

**Factory Executive/Official Vehicle**—a new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor or their subsidiaries.

**Internet**—a system that connects computers or computer network.

**Licensee**—any person required to obtain a license from the Louisiana Motor Vehicle Commission.

**Manufacturer's Label**—the label required by the Automobile Information Disclosure Act, 15 U.S.C. 1231-1233, to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to the dealer.

**Program Vehicle**—used vehicle that is purchased at a manufacturer's closed auction or sold by or directly from the manufacturer or distributor which is current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

**Rebate or Cash Back**—a sum of money refunded to a purchaser for the benefit by the manufacturer or distributor after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to himself or for his benefit subsequent to payment in full.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:1253 E.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### **§709. Availability of Vehicles**

A. A licensee may advertise a specific vehicle or line-make of vehicles for sale if:

1. the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is clearly and conspicuously disclosed in the advertisement; and

2. the price advertisement sets forth the number of vehicles available at the time the advertisement is placed or a dealer can show he has available a reasonable expectable public demand based on prior experience. In addition, if an advertisement pertains to only one specific vehicle, then the advertisement must also disclose the vehicle's stock number or vehicle identification number.

B. Motor vehicle dealers may advertise a specific used vehicle or vehicles for sale if:

1. the specific used vehicle or vehicles is in the possession of the dealer at the time the advertisement is placed; and
2. the title certificate to the used vehicle has been assigned to the dealer.

C. This Section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§711. Accuracy**

A. All advertised statements shall be accurate, clear and conspicuous.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§713. Untrue Claims**

A. The following statements are prohibited, list not exclusive:

1. statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own motor vehicle" or statements with similar meaning;

2.a. statements such as "everybody financed", "no credit rejected", "we finance anyone", "guaranteed approval", and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit;

b. statements such as "all credit applications accepted", or terms with similar meaning are deemed deceptive and shall not be used;

3. statements representing that no other person grants greater allowances for trade-ins, however stated, unless such is the case;

4. statements representing that because of its large sales volume a person is able to purchase vehicles for less than another person selling the same make of vehicles. Statements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet," and "factory wholesale outlet," shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used;

5. "double rebates," "triple rebates" or any other amount of rebates that are not truly offered by the manufacturer are prohibited;

6. specific claims or discount offers shall not be used in connection with any motor vehicle other than new or a demonstrator and then only to show the difference between the dealer's own current selling price and the bona fide manufacturer's suggested list price, if an automobile, or manufacturer's suggested retail price, if a truck. Full explanation must be given, as for example, "save or discount \$ from manufacturer's list/retail price." Such statements as "up to," "as much as," "from"-to," etc., shall not be used in connection with savings claims;

7. any claims such as "first", "largest" and/or "biggest" may be advertised only when the licensee is the "first", "largest" and/or "biggest" in retail sales for a calendar year. The claim of "first", "largest" and/or "biggest" must be qualified as to validity (using valid source data) and the time

period of the claim with all qualifying language to be in the same size print as the claim. Additionally, the advertisement of the claim may only be utilized for the following calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§715. Layout**

A. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered for sale or lease at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualification shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§717. Manufacturer's Suggested Retail Price**

A. The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, state and local taxes, title, and license fees may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded. With respect to advertisements placed with local media in Louisiana by a manufacturer or distributor which includes the names of the local dealers of the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only state and local taxes, license, and title fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§719. Dealer Price Advertising**

A. The featured price of a new or used motor vehicle, when advertised, must be the full cash price for which the vehicle will be sold to any and all members of the buying public. The only charges that may be excluded from the advertised price are:

1. state and local taxes;
2. license;
3. title; and
4. notarial fees, convenience fees and documentary fees.

B. A qualification may not be used when advertising the price of a vehicle such as "with trade", "with acceptable trade", "with dealer-arranged financing", "rebate assigned to dealer" or "with down payment".

C. If a price advertisement of a new motor vehicle discloses a rebate, cash back, discount savings claim, or other incentive, the full cash price of the vehicle must be

disclosed as well as the price of the vehicle after deducting the incentive. The following is an acceptable format for advertising a price with rebates and other deductions:

Mfg. Sugg. Retail Price	\$9,995
less rebate	\$ 500
less dealer discount	\$ 500
Sale Price	\$8,995

D. If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in Subsection C first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format:

Mfg. Sugg. Retail Price	\$9,995
less rebate	\$ 500
less dealer discount	\$ 500
Sale Price	\$8,995
First Time Buyer's Receive Additional \$500 Off	

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §721. Identification

A. When the price of a vehicle is advertised, the following must be disclosed:

1. model year;
2. make;
3. model line and style or model designation; and
4. whether the vehicle is a used, demonstrator, or a factory executive/official vehicle.

B. Expressions such as "fully equipped", "factory equipped", "loaded", and other such terms shall not be used in any advertisement that contains the price of a vehicle unless the optional equipment of the vehicle is listed in the advertisement.

C. An illustration of a motor vehicle used in an advertisement must be substantially the same as that of the motor vehicle advertised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §723. Advertising at Cost or Invoice

A. No advertisement shall be run which uses the term or terms "invoice"; "cost"; "percent over/under cost, invoice or profit"; "\$\$\$ over/under cost, invoice or profit".

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §725. Trade-In Allowances

A. No guaranteed trade-in amount or range of amounts shall be featured in advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §727. Used Vehicles

A. A used vehicle shall not be advertised in any manner that creates the impression that it is new. A used vehicle shall be identified as either "used" or "pre-owned". Terms such as program car, special purchase, factory repurchase, certified or other similar terms are not sufficient to designate a

vehicle as used, and these vehicles must also be identified as "used" or "pre-owned".

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §729. Demonstrators, Factory Executive/Official Vehicles

A. If a demonstrator or factory executive/official vehicle is advertised, the advertisement must clearly and conspicuously identify the vehicle as a demonstrator or factory executive/official vehicle. A demonstrator or factory executive/official vehicle may be sold only by a dealer franchised and licensed to sell that line-make of new motor vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §731. Auction

A. Terms such as "auction" or "auction special" and other terms of similar import shall be used only in connection with a vehicle offered or sold at a bona fide auction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §733. Free Offers

A. No merchandise or enticement may be described as "free" if the vehicle can be purchased or leased for a lesser price without the merchandise or enticement of if the price of the vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement. The advertisement shall clearly and conspicuously disclose the conditions under which the "free" offer may be obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §735. Cash Offers

A. Any cash offer or anything that is convertible to cash funded by the dealer shall not be used and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §737. Authorized Dealer

A. The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a Louisiana Motor Vehicle Commission license to sell those vehicles he is holding himself out as "authorized" to sell.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

### §739. Manufacturer and Distributor Rebates

A. It is unlawful for a manufacturer or distributor to advertise any offer of a rebate, refund, discount, or other financial inducement or incentive, which is either payable to or for the benefit of the purchaser or which reduces the amount to be paid for the vehicle, whether the amount is the vehicle purchase price, the interest or finance charge expense, or any other cost accruing to the purchaser if any

portion of such rebate, refund, discount, or other financial incentive or inducement is paid or financed or in any manner contributed to by the dealer selling the vehicle, unless the advertisement discloses that the dealer's contribution may affect the final negotiated price of the vehicle. With respect to interest or finance charge expense programs, an advertisement shall disclose that participating dealers contribute to the reduction of the financing rate and that the dealer's contribution may affect the final negotiated price of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§741. Rebate and Financing Rate Advertising by Dealers**

A. It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, discount, or other financial inducement or incentive if the dealer contributes to the manufacturer's or distributor's program unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the vehicle. With respect to interest or finance charge expense programs, if a participating dealer contributes to the reduction of a financing rate, then a disclosure must state that the dealer's contribution may affect the final negotiated price of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§743. Lease Advertisements**

A. Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financing plan", "drive away for \$\_\_\_\_\_ per month", or other terms or phrases that do not use the term "lease", do not constitute adequate disclosure of a lease. Lease advertisements shall not contain the phrase "no down payment" or words of similar import if any outlay of money is required to be paid by the customer to lease the vehicle. Lease terms that are not available to the general public shall not be included in advertisements directed at the general public, or all limitations and qualifications applicable to qualified buyers to the lease terms advertised shall be clearly and conspicuously disclosed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§745. Manufacturer Sales; Wholesale Prices**

A. New vehicles shall not be advertised for sale in any manner that creates the impression that they are being offered for sale by the manufacturer or distributor of the vehicles. Advertisements by persons shall not contain terms such as "factory sale", "fleet prices", "wholesale prices", "factory approved", "factory sponsored", or any other similar terms which indicate sales other than retail sales from the dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§747. Savings Claims; Discounts**

A. A savings claim or discount offer is prohibited except to advertise a new or demonstrator vehicle, and the advertisement must show the difference between the dealer's selling price and the manufacturer's, distributor's, or converter's total suggested list price or MSRP.

B. The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

C. If a dealer has added an option obtained from the manufacturer or distributor of the motor vehicle on which it is installed and disclosed the option and factory suggested retail price of the option on a dealership addendum sticker prior to offering the vehicle for sale at retail, the dealer may advertise a savings claim on that vehicle as long as the difference is shown between the dealer's selling price and the total selling price as disclosed on the dealership addendum sticker and discloses the factory-available options added in the advertisement. If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle.

D. Statements such as "up to", "as much as", "from", shall not be used in connection with savings or discount claims.

E. No person may advertise a savings claim or discount offer on used motor vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

#### **§749. Sales Payment Disclosures**

A.1. An advertisement that contains any one of the following messages, statements, or terms:

- a. the amount of a down payment, in either a percentage or dollar amount;
- b. the amount of any payment, in either a percentage or dollar amount;
- c. the number of payments;
- d. the period of repayment; or
- e. the amount of any finance charge;

2. must include the following:

- a. the amount or percentage of the down payment;
- b. the terms of repayment (the number of months to make repayment and the amount per month) including the amount and due date of any balloon payment;
- c. the annual percentage rate or APR; and
- d. the amount of annual percentage rate, if increased, after consummation of the credit transaction.

B. An advertisement which complies with the Federal Truth-In-Leading Act (15 U.S.C. §160 et seq.) and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this Section. Any advertisement not in compliance with these federal provisions constitutes violation(s) of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§751. Payment Disclosure—Lease**

A. It is an unfair or deceptive act to advertise the offer of a "consumer lease" if the advertisement contains any one of the following two "triggering terms": amount of any payment or a statement of any capitalized cost reduction or other payment required prior to or at consummation or by delivery, if delivery occurs after consummation, without clearly and conspicuously disclosing:

1. that the transaction is a lease in close proximity to and, where applicable, in the same decibel tone as, the amount of the periodic payment;
2. the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
3. the number, amounts, and due dates or periods of scheduled payments under the lease;
4. a statement of whether a security deposit is required; and
5. a statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

B. Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is part of the total amount due at lease signing shall not be more prominent than that disclosure.

C. An advertisement which complies with the Consumer Leasing Act of 1976 (15 USC 1601 et seq.), and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§753. Bait Advertisement**

A. "Bait" advertisement, as defined in §707, shall not be used by any person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§755. Lowest Price Claims**

A. Representing a lowest price claim, best price claim, best deal claim, or other similar superlative claim shall not be used in advertising.

B. A person may not advertise a "meet or beat" guarantee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§757. Fleet Prices**

A. Terms such as "fleet prices", "fleet sales", "suppliers prices", or other terms implying that retail individual customers will be afforded the same price and/or discount as multi-purchase commercial businesses shall not be used in advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**§759. Bankruptcy/Liquidation Sale**

A. No licensee may willfully misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out-of-business. A person who advertises a liquidation sale, auction sale, or going out-of-business sale shall state the correct name and permanent address of the owner of the business in the advertisement. A person may not conduct a sale advertised with the phrase "going out-of-business", "closing out", "shutting doors forever", "bankruptcy sale", "foreclosure", or "bankruptcy", or similar phrases or words indicating that an enterprise is ceasing business unless the business is closing its operations and follows the procedures required by Chapter 1, Part II, Title 51, Trade and Commerce, Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The proposed Rule should have a positive effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. What effect will this have on the ability of the family or local government to perform the function as contained in this proposed Rule? This Rule is designed to help the family to obtain the information and help needed to own their own automobile.

Any person may submit data, views or positions, orally or in writing to the Louisiana Motor Vehicle Commission, 3519 12th Street, Metairie, LA 70002, or by telephone at 504-838-5207, and facsimile 504-838-5416.

Lessie House  
Executive Director

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

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

The proposed rule change will have no impact on costs or savings to state or local governmental units. This rule change is merely a simplification of existing advertising rules, incorporating into the administrative rules policies and interpretations which have been standard practice for many years.

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

The proposed rule change will have no impact on revenue collections of state or local governmental units.

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

The proposed rule change will not effect costs and/or economic benefits to directly affected persons or non-governmental groups. The proposed rule change updates, clarifies and provides specificity to the existing language of the advertising rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed rule change will have no impact upon competition and employment.

Lessie House  
Executive Director  
0708#036

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Real Estate Commission**

**Disbursement of Escrow Deposits  
(LAC 46: LXVII.2901)**

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII.2901. The purpose of the amendment is to remove the Louisiana Real Estate Commission as a determining authority in the distribution of disputed escrow deposits.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate  
Subpart 1. Real Estate**

**Chapter 29. Disbursement of Escrow Deposits**

**§2901. Escrow Disputes**

A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 90 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following.

1. Disburse the funds upon the written and mutual consent of all of the parties involved.

2. Disburse the funds upon a reasonable interpretation of the contract that authorizes the broker to hold the funds. Disbursement may not occur until 10 days after the broker has sent written notice to all parties and licensees.

3. Place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding.

4. Disburse the funds upon the order of a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 33:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2007 *Louisiana Register*. The proposed Rule has no known impact on family formation, stability, and autonomy.

Interested parties are invited to submit written comments on the proposed regulations through September 3, 2007, at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, Post Office Box 14785, Baton Rouge, LA, 70898-4785 or to 5222 Summa Court, Baton Rouge, LA, 70809.

Julius C. Willie  
Executive Director

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

**RULE TITLE: Disbursement of Escrow Deposits**

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

There are no estimated implementation costs (savings) to state or local governmental units associated with this rule change which removes the Louisiana Real Estate Commission as a determining authority in the distribution of disputed escrow deposits.

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

The proposed rule change will have no impact on revenue collections of state or local governmental units.

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

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment associated with this rule change.

Julius C. Willie  
Executive Director  
0708#059

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Real Estate Commission**

**Presentation of Offers and Counter Offers; Forms  
(LAC 46: LXVII.3900)**

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII.3900. The purpose of the amendment is to provide for the use of a uniform purchase agreement form in

real estate transactions, as mandated by R.S. 37:1449.1, effective January 1, 2008.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXVII. Real Estate**

**Subpart 1. Real Estate**

**Chapter 39. Presentation of Offers and Counter Offers; Forms**

**§3900. Purchase Agreement Forms**

A. The purchase agreement form used by licensees representing the buyer or seller in a residential real estate transaction shall be the *Residential Agreement to Buy or Sell*, or any successor thereof, prescribed by the Louisiana Real Estate Commission.

B. The *Residential Agreement to Buy and Sell*, or any successor thereof, shall be used in accordance with the provisions of R.S. 37:1449.1.

C. The official source of the prescribed purchase agreement form shall be the Louisiana Real Estate Commission website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 33:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2007 *Louisiana Register*. The proposed Rule has no known impact on family formation, stability, and autonomy.

Interested parties are invited to submit written comments on the proposed regulations through September 3, 2007, at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA, 70898-4785 or to 5222 Summa Court, Baton Rouge, LA, 70809.

Julius C. Willie  
Executive Director

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

**RULE TITLE: Presentation of Offers and Counter Offers; Forms**

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

There are no estimated implementation costs (savings) to state or local governmental units. The proposed rule is an extension of Act 333 (2006), which enacted R.S. 37:1449.1, relative to the use of a uniform purchase agreement form in real estate transactions. The rule provides the name of the form required by R.S. 37:1449.1, how it is obtained, and how it is used.

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

The proposed rule change will have no impact on revenue collections of state or local governmental units.

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

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

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

There is no anticipated effect on competition and employment as a result of this rule change.

Julius C. Willie  
Executive Director  
0708#058

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Examiners of Nursing Facility Administrators**

Pre-Examination Requirements: Conditions Precedent  
(LAC 46:XLIX.503)

The Board of Examiners of Nursing Facility Administrators proposes to amend LAC 46:XLIX.503 et seq., in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Board of Examiners of Nursing Facility Administrators Act R.S. 37:2504A(1).

The purpose of the proposed Rule change is to ensure continued quality professional healthcare in the nursing home industry. To provide such professional healthcare it is deemed necessary to increase educational requirements through a college degree program from an accredited institute of higher learning.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLIX. Board of Examiners of Nursing Facility Administrators**

**Chapter 5. Examinations**

**§503. Pre-Examination Requirements: Conditions Precedent**

A. No person shall be admitted to or be permitted to take an examination for licensing as a nursing home administrator unless he shall have first submitted evidence satisfactory to the board that he:

1. - 4. ...

5. has successfully completed:

a. a bachelors degree from an accredited institute of higher learning; or

b. 60 hours of college education with an overall C average and three years of experience in nursing or administration in a licensed nursing facility; or

c. a two year nursing degree and at least two years experience as a director of nursing in a licensed nursing facility within the last five years prior to making application for licensure as a nursing facility administrator.

B. Nursing as used in Subparagraph A.5.b of this Section shall mean an individual who is a licensed practical nurse or registered nurse or equivalent.

C. Administration as used in Subparagraph A.5.b of this Section shall mean an individual whose primary duties include billing, accounts receivable or accounts payable.

D. Fifteen hours of such secondary education must be in the combination of the following courses: accounting, business law, economics, general health care, gerontology, management, marketing, nutrition, physical science, psychology, and sociology.

E. The provisions of Subparagraphs A.5.b, c, and d of this Section shall terminate and be of no effect beginning January 1, 2012.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2505.

**HISTORICAL NOTE:** Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 20:789 (July 1994), LR 33:

#### **Family Impact Statement**

The proposed amendments, to LAC 46:XLIX.503, should not have any impact on family as defined by R.S. 49:972. There should not be any effect on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments until 4:00 p.m., September 10, 2007, to Mark A. Hebert, Board of Examiners of Nursing Facility Administrators, 5647 Superior Drive, Baton Rouge, LA 70816.

Mark A. Hebert, NFA  
Executive Director

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

#### **RULE TITLE: Pre-Examination Requirements: Conditions Precedent**

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

Other than the rule publication costs, which are estimated to be \$200 in fiscal year 2007, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Examiners, any state unit or local government unit.

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

The proposed 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)**

The proposed rule will increase educational requirements from 60 semester hours to a Bachelors degree in order to be licensed by the Board of Examiners of Nursing Facility Administrators. There is no anticipated cost increase to most applicants as approximately 90 percent of new applicants in Fiscal year 05-06 had BS or BA degrees. The Board expects this trend to continue until the rule is fully implemented.

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

There is no anticipated significant effect on competition and employment, other than the added incentive that a degree would bring to the decision when hiring one individual with a degree over another who may be "grandfathered" and had only received 60 or more credit hours.

Mark A. Hebert  
Executive Director  
0708#023

Robert E. Hosse  
Staff Director  
Legislative Fiscal Officer

## **NOTICE OF INTENT**

### **Department of Health and Hospitals Board of Medical Examiners**

Medical Professionals; Practice  
(LAC 46:XLV.4231-4239)

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., that the Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by the Louisiana Medical Practice Act, R.S. 37:1261-92 and by R.S. 37:1309, intends to amend Title 46:XLV, Subpart 3, Chapter 42 of its existing Rules governing illegal payments to adopt Rules implementing and providing for enforcement, with respect to physicians, of Act 819, adopted in 2006 by the Louisiana Legislature, enacting R.S. 37:1306-1310. The proposed Rules, which the Act directs the board to promulgate, prohibits physicians providing medical services within the primary service area of a rural hospital from making referrals, for specified healthcare services, to healthcare facilities located within the primary service area of a rural hospital in which they or an immediate family member have a direct or indirect ownership interest. The proposed Rules also prohibit physicians from billing for healthcare services provided at a time during which a referral was made in violation of the proposed Rules. Consistent with the implementing law, the proposed Rules exempt physicians who have offered the rural hospital the option to participate in the ownership of the healthcare facility on commercially reasonable terms and conditions commensurate with the interest offered of not less than a majority interest in the healthcare facility. The proposed Rules interpret and define critical terms appearing in the subject law, specify the manner in which physicians must comply with the prohibitions and requirements and provide for administrative enforcement and sanctions with respect to violations, LAC 46:XLV, Subpart 3, Chapter 42, §§4231-4239. The proposed Rules are set forth below.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Professions**

#### **Subpart 3. Practice**

### **Chapter 42. Illegal Payments; Required Disclosure of Financial Interests; Prohibition on Rural Physician Self-Referral**

#### **Subchapter C. Prohibition on Rural Physician Self Referral**

#### **§4231. Scope and Purpose of Chapter**

A. Scope of Chapter. The rules of this Chapter implement enforcement of R.S. 37:1308, which prohibits physician referral of health care services to a healthcare facility, located within the primary service area of a rural hospital, in which the referring physician or an immediate family member of the referring physician maintains a direct or indirect ownership interest.

B. Declaration of Purpose. Interpretation and Application. Rural hospitals are an essential part of the healthcare delivery system in this state. For many, rural hospitals and the full time emergency room services they offer provide the only healthcare services readily available.

The development of healthcare facilities that duplicate services in the primary service areas of rural hospitals endangers their continued existence by reducing revenue and potentially leading to the closure or reduction of access to hospital and emergency room services. The purpose of these rules and the laws they implement is to encourage innovative collaboration between and among rural hospitals and physicians in the delivery of services in rural areas. These rules shall be interpreted, construed, and applied so as to give effect to such purposes and intent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

#### **§4233. Definitions and Construction**

A. Definitions. As used in this Chapter the following terms shall have the following meanings unless the context requires otherwise.

*Board*—the Louisiana State Board of Medical Examiners.

*Commercially Reasonable Terms and Conditions*—those terms and conditions that would be reasonable to a prudent individual operating a business of similar type and size as a rural hospital even in the absence of referrals to the rural hospital or healthcare facility by a physician who owns, or whose immediate family member owns, an interest in the healthcare facility in which the rural hospital has been offered the opportunity to participate as an owner. The provisions of 42 U.S.C. 1395nn, and the regulations and regulatory guidance promulgated and issued by the Centers for Medicare and Medicaid Services and its predecessor or successor, shall be considered in determining whether terms and conditions are commercially reasonable.

*Department*—the Louisiana Department of Health and Hospitals.

*Healthcare Facility*—an independent diagnostic testing facility, magnetic resonance imaging equipment or facility, computerized tomography equipment or facility, Positron Emission Tomography scanner or facility, an ambulatory surgical center licensed by the department, or any outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center. However, the term *healthcare facility* shall not mean:

a. a rural hospital that existed on April 1, 2006, or that replaces a rural hospital that existed on April 1, 2006;

b. a rural hospital that is a replacement facility of a rural hospital that was damaged by Hurricane Rita or Hurricane Katrina;

c. an entity owned or operated by the state of Louisiana or the United States;

d. a physician's practice or a physician group practice, when such practice is owned and operated exclusively by physicians for the purpose of providing healthcare services and is not licensed or Medicare-certified as a rural health clinic;

e. any facility under development, including services provided by a mobile unit that is part of an existing facility as of April 1, 2006, or operating as of April 1, 2006. A facility shall be considered under development if:

i. a representative of the facility has, prior to April 1, 2006, filed a license application with the department for the establishment of the proposed healthcare facility;

ii. the facility can demonstrate that a minimum of \$25,000 in architectural or engineering expenses have been incurred in connection with the proposed facility prior to April 1, 2006; or

iii. the facility has received a certificate of occupancy; or

f. any community health care clinic or rural health clinic.

*Healthcare Services*—magnetic resonance imaging services, computerized tomography services, Positron Emission Tomography scanner services, ultrasound services, any other imaging services that have become generally accepted methods of providing imaging services after April 17, 2006, as determined by the department, any services rendered by an ambulatory surgical center licensed by the department, or any services rendered by an outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center.

*Immediate Family Member*—husband or wife, birth or adoptive parent, child, or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, grandparent or grandchild, and spouse of grandparent or grandchild.

*Primary Service Area*—the smaller of either a radius of twenty-five miles from a rural hospital's main campus or the area represented by the number of postal zip codes, commencing with the rural hospital's zip code, in which seventy-five percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent twelve month Medicare cost reporting period. In determining the primary service area, each outpatient encounter and each inpatient stay shall be viewed as a separate patient, and the zip code attributable to the patient shall be the zip code of the patient at the time of the inpatient stay or outpatient encounter. Primary service area descriptions published by the department in the *Louisiana Register* shall be utilized in determining primary service areas. However, the term *primary service area* shall not include the cities of Alexandria, Baton Rouge, Bossier City, Covington, Hammond, Houma, Kenner, Lafayette, Lake Charles, Mandeville, Monroe, New Iberia, New Orleans, Opelousas, Ponchatoula, Ruston, Shreveport, Slidell, Thibodaux, or West Monroe.

*Proposing Party*—a person or entity that offers to enter into a joint venture with a rural hospital as well as any person or entity related to the proposing party by common ownership or control as such terms are defined for purposes of 42 C.F.R. 413.17, or its successor provision.

*Rural Hospital*—shall be defined as provided for in R.S. 40:1300.143, as such law existed on April 1, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

#### **§4235. Physician Prohibitions**

A. Except as provided in §4337 of this Subchapter, no physician shall make a referral to any healthcare facility for the receipt of healthcare services in which the referring physician or an immediate family member of the referring physician maintains a direct or indirect ownership interest.

The prohibition contained in this Section shall only apply if both of the following conditions are met:

1. the physician provides professional medical services within the primary service area of a rural hospital; and

2. the healthcare facility in which the physician or any immediate family member of the physician maintains a direct or indirect ownership is located within the primary service area of any rural hospital.

B. No physician who refers a patient to a healthcare facility in contravention of this Section shall bill any patient, third party payer, or any other entity for healthcare services provided by the physician to the patient at the time during which the referral was made in violation of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

#### **§4237. Exceptions**

A. The prohibitions contained in Section 4235 of this Subchapter shall not apply to healthcare services furnished by a healthcare facility provided that:

1. the rural hospital in whose primary service area such facility is located is offered the option to participate in the ownership of the healthcare facility on commercially reasonable terms and conditions that are conveyed in a written offer by the proposing party;

2. the offer is priced commensurate with the interest offered, whether such purchase price is in the form of cash or debt, and the interest offered is not less than a majority interest in the healthcare facility;

3. the rural hospital accepts or rejects the offer in writing within ninety days of receipt from the proposing party after being provided an opportunity to review the following with respect to the proposed healthcare facility:

a. a bona fide business plan, including a financial feasibility study;

b. pro forma income and balance sheets; and

c. a sources and uses of funds analysis;

4. the closing of the acquisition of the ownership interest occurs within ninety days of written acceptance of the offer unless delayed by mutual consent of the rural hospital and proposing party; and

5. the rural hospital and proposing party act in good faith in accordance with the requirements of Civil Code Article 1759.

B. The prohibitions contained in Section 4235 of this Subchapter shall not be applicable until and unless *primary service area descriptions* are published in the *Louisiana Register* in accordance with R.S. 37:1309B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

#### **§4239. Effect of Violations; Sanctions**

A. Any violation or failure of compliance with the provisions of this Subchapter shall be deemed a violation of the Medical Practice Act, R.S. 37:1285, providing cause for the board to suspend the license of a physician culpable of such violation or take such other action as the board may deem appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

#### **Family Impact Statement**

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

Interested persons may submit written comments to Rita Arceneaux., Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at P. O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130). She is responsible for responding to inquiries on the proposed Rules. A public hearing will be held on Monday, September 24, 2007 at 3 p.m. at the board's offices, 630 Camp Street, New Orleans, LA 70130. At that time all interested persons are invited to attend and orally present data, views, comments or arguments. The deadline for receipt of written comments is 3 p.m. on Monday, September 24, 2007, the date of the public hearing.

Robert L. Marier, M.D.  
Executive Director

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

##### **RULE TITLE: Medical Professionals; Practice**

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

Other than notice and rule publication costs estimated at a combined total of \$556, which costs will be absorbed within the board's budget during FY 2007-08, it is not anticipated that the proposed rule amendments will result in any additional costs or savings to the board or any other state or local governmental unit.

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

It is not anticipated that the proposed rule amendments will have any effect on the revenue collections of the board or those of any other state or governmental unit.

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

The board proposes to adopt rules for enforcement of requirements and restrictions on physicians, consistent with the provisions of Act 819 of the 2006 Regular Session of the Legislature (R.S. 37:1306-1310). The Act directs the board to promulgate rules and regulations providing for disciplinary action for violating its mandate that prohibits physicians providing medical services within the primary service area of a rural hospital from making referrals for specified healthcare services to healthcare facilities located within the primary service area of a hospital in which they or an immediate family member have a direct or indirect ownership interest. The proposed rules also prohibit physicians from billing for healthcare services provided at a time during which a referral was made in violation of the proposed rules. Additionally, the rules except physicians who offer the rural hospital the option to participate in the ownership of the healthcare facility on commercially reasonable terms and conditions commensurate with the interest offered of not less than a majority interest in the healthcare facility. While it is anticipated that there may well be an unquantifiable increase in compliance costs, workload and paperwork to affected individuals and groups, inasmuch as there is no known available data on the number of physicians, healthcare facilities or rural hospitals that may be affected by the proposed rules, it is not possible to estimate the

effect on costs, workload or paperwork that such physicians, healthcare facilities, or hospitals may incur. Similarly, while it is anticipated that the proposed rules may impact receipts or income of physicians and healthcare facilities that currently receive income or other remuneration from such referrals, and of rural hospitals which may not, there is no known available data indicating the number of physicians, healthcare facilities or rural hospitals that might be so affected or the extent of income or other remuneration at issue. Therefore, an estimate of the impact on receipts and/or income of persons or groups that may be affected by the proposed rules is not possible.

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

It is anticipated that the proposed rules may well impact competition between physicians who currently refer patients for specified healthcare services to healthcare facilities located within the primary service area of a rural hospital, in which they or an immediate family member have a direct or indirect ownership interest; and may therefore also impact various healthcare facilities and rural hospitals. Nevertheless, inasmuch as there is no known available data indicating the number of physicians that may be affected by application of the rule, the type or number of referrals that may fall within the scope of the rule, or the number of healthcare facilities or rural hospitals that may be affected, an estimate of the impact on competition among physicians, healthcare facilities or rural hospitals that may result from the proposed rules is not possible.

Robert L. Marier, M.D.  
Executive Director  
0708#069

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Veterinary Medicine

Veterinary Practice  
(LAC 46:LXXXV.700, 701, and 711)

The Louisiana Board of Veterinary Medicine proposes to amend and adopt LAC 46:LXXXV.700, 701, and 711 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1569. This text is being amended to more clearly define minimum standards for veterinary medical record keeping, and clarifies the requirements for a veterinary mobile practice vehicle. The proposed Rule amendment has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 7. Veterinary Practice

#### §700. Definitions

\* \* \*

*Mobile Clinic*—a vehicle with special medical or surgical facilities, including examination and treatment areas and/or surgical facilities, which provides veterinary care to small animals and/or large animals where the patient can be taken into the vehicle.

*Mobile Practice Vehicle*—a vehicle used by a veterinarian in a house call or farm call to provide veterinary care to large

animals only (defined exclusively as equine, food animals, and exotics) where the patient is not taken into the vehicle. The vehicle may be an extension of a hospital or clinic, and/or may have the capabilities of providing aftercare and/or emergency care services.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:666 (June 1994), LR 20:1381 (December 1994), LR 24:940, 941 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998), LR 27:51 (January 2001), LR 27:543 (April 2001), LR 31:3162 (December 2005), LR 33:

#### §701. Record Keeping

A. ...

1. Each Louisiana licensed veterinarian shall maintain an individual written, or computer generated, record on each animal or herd to include identification of animal or herd, diagnosis of illness, disease or condition and treatment provided, progress notes and reassessment, and discharge summary, as follows.

a.i. Identification of the animal or herd shall include the breed, sex, description or permanent identification (if available), tattoos or other identifying marks, and the name and address of the owner.

ii. Diagnosis of illness, disease or condition shall document the animal or herd's history, signs, symptoms, complaints, objective tests such as radiographs and laboratory results, and the veterinarian's interpretation of examination findings, as well as intended goals and treatment including surgical procedures and/or drug therapy. Drug therapy shall include the names of legend drugs, controlled substances and/or over-the-counter (OTC) products as set forth below; the date and amount administered, prescribed or dispensed; and the method of administration.

iii. A progress note shall document the animal or herd's subjective status, changes in objective findings, and progression or regression of goals and treatment. A progress note shall be documented for each visit, for continuation of treatment, for the particular diagnosed illness, disease, or condition.

iv. Reassessment shall include all elements of a progress note, as well as a revision of the treatment plan as indicated. A new diagnosis of illness, disease or condition may be warranted. Reassessment shall only be performed by the veterinarian. Reassessment, including a new diagnosis of illness, disease, or condition when applicable, shall be documented at the time such is performed.

v. Discharge summary shall document the reasons for discontinuation of care, degree or goal of achievement, and a discharge plan, if required, which shall only be documented and signed by the attending veterinarian.

vi. The documentation standards set forth above do not mandate a particular format, however, a record must include these elements, as well as any other document required by law or the board's rules. Examples include General Anaesthesia Consent Forms, Euthanasia Consent Forms, documents involving prescribing, administering, or dispensing legend drugs or controlled substances, and billing invoices or statements of services or products provided. The

veterinarian shall be ultimately responsible for the content and maintenance of the record.

A.1.b. - D.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 6:71 (February 1980), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), LR 19:1328 (October 1993), LR 20:1381 (December 1994), LR 23:969 (August 1997), LR 24:941 (May 1998), LR 25:872 (May 1999), LR 33:

## **§711. Definitions for Classification of Practice**

### **Facilities**

A. - E.12. ...

F. A mobile practice vehicle shall comply with the following requirements.

1. A mobile practice vehicle shall provide veterinary care to large animals only (defined exclusively as equine, food animals, and exotics) where the patient is not taken into the vehicle.

2. A mobile practice vehicle may be an extension of an existing hospital and/or clinic defined in §700. The hospital or clinic associated with the mobile practice vehicle shall operate in compliance with §711A and B.

3. The veterinarian operating or providing veterinary care in a mobile practice vehicle which does not have the capabilities of providing aftercare and/or emergency care services, and/or which is not an extension of a existing hospital or clinic, shall have a prior written agreement with a local veterinary hospital or clinic, within a 30 mile or 30 minutes travel time, to provide aftercare and/or emergency care services. The written agreement to provide aftercare and/or emergency care services in this rule shall not be required if the mobile practice vehicle is an extension of a existing hospital or clinic, and/or has the capabilities of providing aftercare and/or emergency care services.

4. A notice of available aftercare and/or emergency care services, including the telephone number and physical address of the local veterinary hospital or clinic, or hospital or existing clinic associated with the mobile practice vehicle if applicable, shall be posted in a conspicuous place in or on the mobile practice vehicle, and a copy of the notice or information shall be given to each client prior to the provision of veterinary care.

5. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall physically remain on site until all patients are discharged to their respective owners, or authorized agents.

6. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for record keeping regarding the storage, maintenance and availability to the client of the medical records for the patients as set forth in the board's rules on record keeping.

7. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for maintaining, administering, dispensing, and prescribing any drug, medicine, chemical, and/or biological agent as set forth in the board's rules.

8. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for the

information and representations provided to the clients by the staff of the mobile practice vehicle.

9. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall have his license or current renewal, in good standing, to practice veterinary medicine in Louisiana on display in a conspicuous place on or in the mobile practice vehicle.

10. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall make all decisions which involve, whether directly or indirectly, the practice of veterinary medicine and will be held accountable for such decisions in accordance with the Veterinary Practice Act, the board's rules, and other applicable laws.

11. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for compliance with all standards and requirements set forth in the Veterinary Practice Act, the board's rules, and other applicable laws.

12. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall provide the board, upon written demand, a copy of the written agreement with the local veterinary hospital or clinic required by this rule, if such is not the hospital or clinic associated with the mobile practice vehicle and/or the mobile practice vehicle does not have the capabilities of providing aftercare and/or emergency care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1330 (October 1993), amended LR 23:969 (August 1997), LR 24:2123 (November 1998), LR 31:3162 (December 2005), LR 33:

Interested parties may submit written comments to Wendy D. Parrish, Administrative Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801, or by facsimile to (225) 342-2142. Comments will be accepted through the close of business on September 20, 2007. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on Thursday, September 27, 2007, at 10 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA.

Wendy D. Parrish  
Administrative Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Veterinary Practice**

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

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$300 in FY 2008). Licensees will be informed of this rule change via the board's regular newsletter, website, or other direct mailings, which result in minimal costs to the Board.

### **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 as no increase in fees will result from the amendment.

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

The proposed rules amendment clarifies minimum standards for veterinary medical record keeping, and more clearly defines veterinary mobile practice vehicle.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule.

Wendy D. Parrish  
Administrative Director  
0708#034

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Water and Wastewater Operator Certification and Sewage Disposal (LAC 48:V.Chapter 73 and XIII.303)**

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, pursuant to the authority granted in R.S. 40:1148, proposes to amend the Louisiana Administrative Code (LAC), Title 48 (Public Health-General), Part V, Subpart 21, Chapter 73 (Water and Wastewater Operator Certification). In addition, the state health officer acting through the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, pursuant to the authority in R.S. 40:4(A)(6) and R.S. 40:5 intends to amend LAC, Title 51 (Public Health-Sanitary Code), Part XIII (Sewage Disposal). These proposed amendments are necessary in order to implement the provisions of Acts 236 and 270 of the 2005 Regular Session of the Louisiana Legislature. In addition, other amendments throughout the entire Operator Certification rule have been proposed with the goal of clarifying the requirements to make the regulations easier to understand by the general public as well as by the water and sewerage system operators themselves. The State Sanitary Code (Part XIII, Sewage Disposal) is proposed to be amended to make reference therein to the requirement for certified wastewater operators for sewerage systems and to provide an exception thereto.

**Title 48  
PUBLIC HEALTH—GENERAL  
Part V. Preventive Health Services  
Subpart 21. Water and Wastewater Operator  
Certification**

**Chapter 73. Certification**

**§7301. Definitions**

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter are defined for the purposes thereof as follows.

*Committee of Certification*—as defined in statute R.S. 40:1142.

*Complex Treatment*—occurs when a water supply system utilizes two or more mechanical units and/or chemical feed units, in addition to at least simple

disinfection, which alters the physical or chemical quality of finished water.

*Department*—the Louisiana Department of Health and Hospitals, Office of Public Health.

*Ground Water (or Groundwater)*—subsurface water occupying the saturation zone from which wells and springs are fed. In a strict sense the term applies only to water below the water table.

*Ground Water System (or Groundwater System)*—a water supply system using ground water as the source of water supply.

*Ground Water Under the Direct Influence of Surface Water*—any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in site specific water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions. The DHH determination of direct influence may be based on an evaluation of site specific measurements of water quality and/or well characteristics and geology with field evaluation.

*Person*—an individual, a public or private corporation, an association, a partnership, a public body created by or pursuant to state law, the state of Louisiana, an agency or political subdivision of the state, a federally recognized Indian tribe, the United States government, a political subdivision of the United States government, and any officer, employee, or agent of one of those entities.

*Operator*—the individual, as determined by the Committee of Certification, in attendance on site of a water supply system or sewerage system and whose performance, judgment, and direction affects either the safety, sanitary quality, or quantity of water or sewage treated or delivered.

*Professional Operator*—an operator of a water supply system or a wastewater system who holds at least one professional operator certificate.

*Professional Operator Certificate*—equivalent to a regular operator certificate as that term is used in R.S. 40:1147(B) and (C).

*Sewerage System or Wastewater System*—a system of piping and appurtenances, including sewage treatment facilities having a capacity of at least 1,501 gallons per day or greater, for collecting and conveying wastewater from source to discharge. In addition, this term shall include facilities which handle 1,500 gallons or less only when such facilities are for non-residential applications, e.g., a commercial sewerage treatment plant serving a restaurant.

*Simple Disinfection*—the process of disinfection of potable water utilizing only a simple chemical feed of hypochlorite solution or injection of chlorine gas.

*Source of Water Supply*—any well, spring, cistern, infiltration gallery, stream, reservoir, pond, or lake from which, by any means, water is taken either temporarily or continuously for potable use.

*Surface Water*—all water open to the atmosphere and subject to surface runoff.

*Surface Water System*—a water supply system using surface water or ground water under the direct influence of surface water (GWUDISW) as a source of water supply.

*Wastewater System*—see *sewerage system*.

*Water Supply System*—the system of pipe, structures and facilities through which water is obtained, treated and sold, distributed or otherwise offered to the public for household or other uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002), amended LR 33:

### **§7303. General Certification and Presence**

#### **Requirements**

A. The basic statutory requirements for operator certification are set forth in R.S. 40:1141-1151.

B. The Operator of any water supply system or any sewerage system shall hold current and valid professional operator certificate(s) [or, where applicable, limited certificate(s)] of the required category(s)/subcategory(s) at or above the level (class) required for the facility or facilities over which he is in responsible charge. Additionally, an operator shall demonstrate that, when not actually on site at the facility, he is capable of responding to that location within one hour of being notified that his presence is needed.

C. Surface water systems and groundwater systems utilizing complex treatment shall have an operator who holds a water treatment certificate, at or above the population-based facility classification level required in §7307.A, present at all times while the treatment facility is in operation. Effective [three years from the date of publication of the final Rule], surface water systems and groundwater systems utilizing complex treatment shall (regardless of population served) have a certified water treatment operator at or above the Class III level present at all times while the treatment facility is in operation. Exact numbers of certified operators required may be determined by the committee of certification. Exceptions:

1. The requirements of this Subsection relative to an operator being present at all times while the treatment facility is in operation shall not apply to systems which serve less than 10,000 persons and which utilize automated operation systems which monitor system operation, record all required readings, notify the operator in the event of a system upset or failure, and allow the operator to remotely control or shut down the system. The determination of whether an automated operation system meets the minimum requirements of this Subsection shall be made by the department on behalf of the committee of certification. Regardless of such exception, an operator holding a water treatment certificate of the proper level shall physically visit and be on-site of the treatment plant daily, preferably for the entirety of at least one shift, while water is being treated.

2. For small groundwater systems only, other exceptions relative to an operator being present at all times while the treatment facility is in operation may be granted by the department in writing on a case-by-case basis. For example, when a small groundwater system meets the definition of complex treatment (as defined herein) yet the technology utilized for the treatment of secondary contaminants is so simple and uncomplicated that the department deems:

- a. that an operator would not be necessary to remain at all times while the treatment facility is in operation; and,
- b. that the installation of an automated operation system for same is unreasonable.

3. After issuance of an initial written exception as authorized under Paragraph C.2 of this Section certain situations (for example, a significant increase in the number of persons served by the system, treatment or chemical changes, problems encountered, etc.) may be grounds for the suspension and/or revocation of such exception by the department.

D. Wastewater systems which normally operate on multiple shifts are required to have at least one certified treatment operator, at or above the appropriate level required, present at the treatment facility on each shift .

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002), amended LR 33:

### **§7305. Categories/Subcategories of Certification/Specific Certification Requirements for each Category/Subcategory**

A. Certifications are offered in each of the following areas (categories), of qualification:

1. Water Category, consisting of the following subcategories:

- a. water production
- b. water distribution
- c. water treatment; and

2. Wastewater Category, consisting of the following subcategories:

- a. wastewater collection,
- b. wastewater treatment.

B. Water Production Certificate Requirements

1. Operators shall hold water production certifications for all water supply systems (including consecutive water systems).

C. Water Distribution Certificate Requirements

1. Operators shall hold water distribution certifications for all portions of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer (or to the master meter of any consecutive system).

D. Water Treatment Certificate Requirements

1. Operators shall hold water treatment certifications , at or above the population-based facility classification level required in §7307.A, for all facilities which treat surface water or ground water under the direct influence of surface water, as well as for those facilities which utilize complex treatment on groundwater. Effective [three years from the date of publication of the final rule], operators shall hold water treatment certifications of at least the Class III level for all facilities (regardless of population) which treat surface water or groundwater under the direct influence of surface water as well as for those facilities which utilize complex treatment on groundwater.

2. Operators shall hold water treatment certifications, at or above the appropriate level required, for any facility which treats groundwater. Exception: Operators who hold water treatment certification shall not be required for any facility which treats groundwater wherein the only type of treatment employed is simple disinfection, and where the well(s) has been determined to not be under the direct influence of surface water.

**E. Wastewater Treatment Certificate Requirements**

1. Operators who hold wastewater treatment certifications are required on all facilities which provide for the treatment of wastewater and the reduction and/or handling of sludge removed from such wastewater.

**F. Wastewater Collection Certificate Requirements**

1. Operators who hold wastewater collection certifications are required on all components of a sewerage system except for the sewage treatment plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:503 (March 2002), repromulgated LR 28:839 (April 2002), amended LR 33:

**§7307. Levels (Classes) of Certification for Types of Facilities**

A. Required levels of certification for an operator, based on facility classification, are as follows.

Population Served by Facility	Facility Classification Level
<1,000	Class 1
1,001-5,000	Class 3
5,001-25,000	Class 3
Over 25,000	Class 4

B. An optional level of certification is offered in the fields of water or wastewater. It is known as the Class 5 level (which minimally involves water or wastewater training conducted at a Louisiana university) as authorized by Act 270 of the 2005 Regular Session [see R.S. 40:1142(F)]. Operators who hold a Class 5 certificate shall be designated as a Senior Operator. While not presently required for any facility, Class 5 level certifications shall be made available by the department and committee of certification. Each Louisiana university offering Class 5 level courses shall obtain prior approval of such course(s) from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:503 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

**§7309. Operator Qualifications—General (Education/Experience)**

A. Whereas the operator certification rule prior to April 1, 2002 specified minimum operator qualifications in years, these values have been converted to "points" for ease of integration with continuing education credits and substitutions between education and experience. Operator qualifications for the various levels of certification shall be determined by minimum point values as follows.

Certification Level	Required Points
Op-In-Training	0
Class 1	1
Class 2	2
Class 3	5
Class 4	8
Class 5	12

NOTE: A minimum educational requirement of a High School Diploma [or General Educational Development (GED) credential] is applied to ALL levels of certification. Required point values for education and experience are in addition to this minimum level of education. Point value required for

Classes 1 and 2 may be from experience alone although 25 percent of this value may be acquired from education credit. No more than 75 percent of the total required points for Classes 3 or 4 may be obtained from education or experience alone. Certifications at the Class 5 level, as authorized by R.S. 40:1142(F), with the designation of Senior Operator, while not presently required for any facility, shall be made available by the department and committee of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

**§7311. Operator Qualifications—Substitutions/Assignment of Point Values**

A. Point values for education, continuing education, and experience are assigned as follows.

1. Education

a. Each year of formal college education (minimum of 30 semester hours) = 1 point

b. Each year of formal graduate level education = 1.5 points

c. Each semester hour (credit) for college-level courses = 0.033 point

d. Each 40-hour qualified, approved training course = 0.10 point

e. Each 8 hours of qualifying, approved continuing education = 0.02 point

f. Each 1 hour of qualifying, approved continuing education = 0.0025 point

2. Experience

a. Each year of qualifying operator experience = 1 point

b. Each year of qualifying related experience = 0.5 point

c. Each year of qualifying supervisory experience = 1.5 points

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), repromulgated LR 33:

**§7313. Certificate Display/Carrying Requirements and Validity**

A. Certified operator certificates must be displayed by the holder in a prominent place in the classified facility. Additionally, at such time as a certified operator is issued a certified operator identification card, the operator shall carry said identification card on their person while on duty in the classified facility. Failure to do so may be considered grounds for revocation of the certificate in accordance with R.S. 40:1145(D).

B. Certified operator certificates shall be valid only so long as the holder uses reasonable care, judgment, and knowledge in the performance of his/her duties. No certified operator certificate will be valid if obtained or renewed through fraud, deceit, or the submission of inaccurate qualification data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

### **§7314. Professional Operator Certificates**

A. All persons seeking to hold a professional operator certificate must be employed by (or own) a water or wastewater system/facility. Upon obtaining at least one Professional Operator Certificate, such individual may refer to himself as a professional operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 33:

### **§7315. Limited Certificates**

A. Only those operator limited certificates issued prior to April 1, 2002, in compliance with R.S. 40:1147(B) remain valid, and shall remain valid only for the facility/system in which the operator was previously employed and for the conditions of operations and duties involved on April 1, 2002.

B. Operator limited certificates shall be renewable upon application provided the requirements for renewal without reexamination for certificates of the same class are satisfied.

C. Persons granted operator limited certificates and renewals of operator limited certificates shall pay the same fees as are fixed for professional operator certificates of the same class.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR33:

### **§7317. Operator-in-Training Certificates**

A. Operator-in-training certificates may be granted to newly hired personnel who have not previously been certified, or who have not held any type of operator certification in excess of two years, and who do not presently qualify for a professional or provisional operator certificate. Such individuals may make application for the appropriate category/subcategory of operator-in-training certificate. The operator certification officer will then begin maintaining records of all approved education, training and experience credits accumulated by the operator-in-training. An operator-in-training certificate shall be valid for a period of 24 months from the date of issue. Persons holding an operator-in-training certificate may not be designated as the professional operator of the water or wastewater system/facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

### **§7319. Provisional Certificates**

A. A provisional certificate may be issued to any applicant who successfully passes an examination and meets the education and experience requirements of this Chapter. Provisional certificates shall not qualify an individual to serve as the professional operator of a water or wastewater system/facility and are not offered to operators currently employed at a water or wastewater system/facility.

B. A provisional certificate may be converted to a professional operator certificate if the certificate holder meets all qualifications associated with obtaining same and

assumes the duties of an active operator and is employed by a water or wastewater system/facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

### **§7321. Examinations—General**

A. All operators wishing to become certified by the State of Louisiana, must pass an examination demonstrating they have the necessary knowledge, skills, judgement, and abilities as specified by the committee of certification. All exam questions will be validated by the committee of certification or their appointees.

B. Exams shall be conducted in the English language.

C. The committee of certification has established open examination periods for water and/or wastewater operators to be examined. They are as follows.

1. One open exam shall be conducted at the conclusion of the Louisiana Conference on Water Supply, Sewerage and Industrial Waste, Inc.'s annual "Short Course" meeting which is held in various locations around the state.

2. One open exam shall be conducted at the conclusion of the Louisiana Rural Water Association, Inc.'s Annual Conference.

3. Other open examinations may be scheduled at other locations as determined by the committee of certification based on their determination of need subject to provisions of §7305 of this Chapter.

4. Application for examinations to be given following scheduled training courses, seminars, workshops, etc., (as listed in §§7329 and 7331 of this Chapter) will be considered on a case-by-case basis by the committee of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

### **§7323. Examinations—Individual Operator Requirements**

A. All persons seeking to become a certified operator or certified operators desiring to increase their level or category/subcategory(s) of certification must make written application to the Committee of Certification to take each examination or series of examinations. The application forms will be made available to the examinee prior to the exam period with ample time given to allow completion prior to the actual exam period. The examinee carries the responsibility for the accuracy of the information contained in the application.

B. Applicants for certification examinations must pay the prescribed exam fee at the conclusion of testing (see §§7333 and 7334 of this Chapter).

C. All examinations shall be administered in the English language. Requests for examinations to be administered orally may be considered by the operator certification administrator, upon written request by an applicant, submitted at least 30 days in advance, with verifiable proof from a physician that the applicant has a medical condition

temporarily preventing him from taking the examination in the conventional (written) manner.

D. Exams shall be taken and passed in sequence beginning with the Class 1 and proceeding up to the Class 4 (or optional Class 5) in each category/subcategory.

E. Applicants may not apply to take and may not take examinations for certification higher than one level above that for which they are currently qualified.

F. If an applicant takes an examination and fails to attain a passing grade (70 percent or higher), he must wait a minimum of 90 days before he can take another exam in the same subcategory and level. After three failed attempts at the same examination, an applicant will be required to attend a 40-hour training course before retesting will be allowed.

G. All examinations will be graded by department personnel and retained for two years. The examinee will be notified of the results. Examinations will not be returned to the examinee, but may, upon written request, be reviewed in the Operator Certification Program Office in Baton Rouge within 30 days following receipt of the notification of results.

H. Individuals caught cheating during the operator certification examinations or found to have prejudiced these exams or applications in any way shall be entitled to an administrative hearing before the committee of certification. If the committee of certification finds that valid grounds exist, it shall recommend that the state health officer revoke the subject's current certificates, it may refuse to certify the applicant and it may reject future applications. As provided in the Administrative Procedure Act, an aggrieved party may seek judicial review of the state health officer's action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

### **§7325. Application for Certification**

A. Once the applicant has passed the required examination(s), has met the minimum education and experience requirements, and has provided evidence that he/she is currently employed by a water or wastewater system/facility (if required), the department will notify the applicant that he/she may apply for the issuance of the appropriate operator certificate.

B.1. All applications for certificates shall be addressed to:

Administrator, Operator Certification Program  
Louisiana Department of Health and Hospitals  
Office of Public Health  
CEHS Mail Bin # 6  
P.O. Box 4489, Baton Rouge, LA 70821-4489

2. Applications for certificates must be accompanied by the prescribed fees as stated in §7335 of this Chapter.

C. All initial applications for new certificates received on or after April 1, 2002, shall be accompanied by a "Certification Law and Rules Examination" to be completed by the applicant as part of the application process.

D. Applicants who pass an examination but do not meet the education and experience requirements will be notified of what education and/or experience and/or training is required to qualify. If an applicant qualifies within two years of the date of the examination, an application with the prescribed fee must be received by the operator certification

unit before the expiration of this two-year period in order that a certificate may be issued; otherwise, reexamination of the applicant will be required.

E. Individuals who have combined work experience in both water and wastewater may make written application to the certification committee for credit toward certification in either or both of the two fields. The work experience will be listed in a detailed resumé application which details the overlapping areas of work responsibility. This application will be certified by the immediate supervisor of the individual requesting certification. The committee of certification will rule on each individual application as presented. These applications will be reviewed by a screening subcommittee composed of members of the operator certification committee.

F. One individual may be designated as the operator over more than one (several) water or wastewater systems or districts provided that he/she can demonstrate active involvement on a daily basis in the operation of each of the systems, and is able to respond to any of the systems' facilities within one hour of notification that his/her presence is required (one-hour rule, see §7303.B). Operators retained by multiple facilities under a contractual basis shall, when required by the committee of certification, satisfactorily demonstrate their ability to adequately oversee the operation of each and all facilities under their supervision. Such demonstration shall include, but is not limited to, substantiating daily operational involvement and proving that compliance with the one-hour rule is achievable.

G. Experience must be in actual water system or sewerage (wastewater) system operation or its approved equivalent and must be in the field applying to the respective subcategory(s). Experience as foreman or supervisor in most capacities in water and sewerage systems may be considered acceptable. Experience in a purely clerical capacity, such as accounting or bookkeeping shall not be considered as acceptable experience. Experience in narrow technical capacities, such as laboratory technicians or meter readers may be considered for partial credit by the committee of certification and will generally be credited at no more than 50 percent of the actual experience required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

### **§7327. Renewal and Recertification**

A. General. Applications and invoices for renewal of certificates will be transmitted to operators of record in January of the first year in each biennial (two-year) renewal cycle. The biennial renewal cycle runs from January 1 of even-numbered years to December 31 of odd-numbered years. Applications for renewal and payment of invoices shall be considered delinquent as of April 30 of the first year in each biennial renewal cycle, and appropriate late fees shall be assessed thereafter.

B. Renewal Requirements. In order to qualify for renewal of certificates held in any and all categories/subcategories, all operators of water and sewerage works shall enumerate, certify and provide evidence that he/she has attended a minimal number of contact hours of approved operator training for each certificate held during the previous biennial (two-year) renewal cycle period. A

minimum of 16 contact hours is required for renewal of certificates held in either the water category or the wastewater category or eight hours per each subcategory certificate held, whichever is the greater.

1. Should one happen to hold certificates offered in all three subcategories of the water category, a minimum of 24 contact hours is required. Approved training is defined as the completion of any of the training courses listed in §7329 of this Chapter. It is required that course outlines (or lesson plans) for other proposed in-service training be submitted to the operator certification unit for review and approval prior to the proposed date of training.

C. Recertification. Operators for whom certification has been expired in excess of two years are not eligible to renew their certificate(s), and shall be required to reapply for certification under the provisions of this Chapter. In such cases, applicants shall be re-examined and shall demonstrate compliance with appropriate education and experience requirements before any certificates will be issued. In those instances where an operator's certificate has previously been revoked by the state health officer, the committee shall recommend any additional requirements for recertification that are deemed appropriate, and rule on the operator's eligibility to reapply for a certificate.

D. Failure to attend the required training or failure to furnish the required information shall constitute grounds for refusal to renew the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002), amended LR33:

### §7329. Training—General

A. Training Courses Available. To be approved for training credit by the Administrator of the Operator Certification Program, the training courses identified in Subsection B of this Section must meet the following general requirements.

1. The administrator must have on file a copy of the course outline of the training course, seminar, workshop, etc. to make his approval decision.

2. Information must include dates, place held, sponsoring organization, speakers/instructors and time (length of subject), and target audience [category/subcategory(s) and levels of certification addressed].

3. No blanket approvals (from year to year) will be given or implied and a separate approval must be given by the operator certification program each time training is given. On doubtful courses, the administrator will bring the matter to the committee of certification for disposition. (An aggrieved applicant may apply for an administrative hearing to be conducted by a panel of the committee of certification.)

4. Operators shall be responsible to assure that the sponsoring organization submits his certified transcript of training credits earned to the administrator.

B. Training courses, short courses, technical sessions, seminars, workshops, etc., recognized by both the committee of certification and the department includes, but are not limited to the following:

1. annual short course of the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes, Inc.;

2. regional conferences of one or more days sponsored and/or co-sponsored by the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes, Inc.;

3. American Water Works Association Annual Conferences, technical sessions, seminars and workshops;

4. National Association of Water Companies Annual Conferences seminars and workshops;

5. Southwest Section, American Water Works Association Annual Conference, technical sessions, seminars and workshops;

6. college or university and vocational-technical sponsored water and/or wastewater courses, as approved by the committee of certification;

7. Water Environment Federation Annual Conference, regional meetings, technical sessions, seminars and workshops;

8. Louisiana Water Environment Association regional meetings, technical sessions, seminars and workshops;

9. Louisiana Rural Water Association, Inc.'s annual training and technical conference, regional meetings, technical sessions, seminars and workshops;

10. Louisiana Environmental Training Center, at University of Louisiana at Lafayette, training courses, technical sessions, seminars and workshops;

11. regional meetings, technical sessions, seminars, workshops and/or training programs, sponsored and/or co-sponsored by the Department of Health and Hospitals, or the Department of Environmental Quality;

12. water and/or wastewater operator training courses approved for certification examinations by the committee of certification; and

13. short schools, technical courses, seminars, workshops and training programs sponsored by other states.

C. A water and/or wastewater organization or utility not listed above may apply to the committee of certification for recognition and approval to conduct a training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002), amended LR 33:

### §7331. Examinations in Conjunction with Training Courses

A. Applicants for approved training courses may request that certification exams be conducted following the completion of the course. In order to obtain approval from the committee of certification, the applicant (sponsoring individual or organization) must comply with the requirements and rules of this Section.

B. Applications for conducting certification exams must be submitted to:

Administrator, Operator Certification Program  
Louisiana Department of Health and Hospitals  
Office of Public Health  
CEHS Mail Bin # 6  
P.O. Box 4489, Baton Rouge, LA 70821-4489

C. Applications for conducting certification exams must be submitted 30 days prior to the beginning of the course.

D. No certification exam shall be conducted without prior written approval from the administrator.

E. Blanket approval for training courses and exams will not be given by the committee of certification, i.e., each

training course and each exam period must be approved according to the requirements of this Section.

F. No exam shall be approved to follow a training course consisting of less than 32 hours.

G. Approval will be given to conduct exams only for the classes and categories covered by the training course, *i.e.*, for training in Class I, II, III or IV in water production, treatment or distribution, or wastewater collection or treatment, or Class V training for a Senior Operator designation.

H. The classes and categories for which the course is designed must be stated in the application.

I. The applicant must submit a detailed course outline to include:

1. the goal of the training course;
2. the particular categories of certification in water and/or wastewater for which the course is designed;
3. each subject to be covered;
4. a formal lesson plan for each subject area to be covered;
5. the number of hours covered in each subject;
6. what references will be supplied in the course; and,
7. what references and materials the student should bring to the course.

J. The applicant must submit the names of all instructors, and their qualifications, including their education and work experience credentials and their certification levels. Instructors shall possess, at a minimum, a "provisional" certification in the subject area covered; or, shall have completed a qualified instructor training course or equivalent; or, be specifically accepted by the committee based upon their credentials.

K. Only those examinations prepared under the auspices of the administrator and the committee of certification will be recognized for certification.

L. All examinations will be conducted and monitored by members of the staff of the department and/or members of the committee of certification. No exams will be conducted without the presence of a sufficient number of monitors approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002), amended LR 33:

**§7333. Fees - General**

A.1. All fees shall be paid in the form of a check or money order made payable to the:

Committee of Certification  
 CEHS Mail Bin # 6  
 P.O. Box 4489, Box 6  
 Baton Rouge, LA 70821-4489

2. Exception: Examination fees may be accepted in cash at the site of the examination. A receipt shall be provided to the payer whenever cash is accepted for payment.

B. All fees are assessed on a per person basis.

C. In no case will the total fees paid by private Louisiana-domiciled corporations exceed \$500.

D. The fees stated in this Section shall not apply to an individual who owns an on-site individual wastewater system of 1,500 gallons per day or smaller.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1142(F) and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002), amended LR 33:

**§7334. Examination Fees**

A. Examination fees are \$5 for each exam.

1. Exception: When water system operator or wastewater system operator training is conducted at a Louisiana university, including but not limited to training for the Class 5 certification level, the following examination fees and provisions shall apply:

- a. fees for each examination are \$25;
- b. pursuant to an agreement reached with the department prior to the beginning of any water system operator or wastewater system operator training to be conducted at a Louisiana university, all or a portion of fees collected at a university may be retained by the university.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1142(F) and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 33:

**§7335. Certification/Certificate Fees**

A.1. Certificate fees reflect the authorized annual fee assessed on a biennial (two-year) renewal cycle basis. Certification/Certificate fees are follows.

Initial Certification (certificate) in each Subcategory	\$ 20/biennially
Additional Initial Certifications (certificates) in each Subcategory	\$ 10/biennially
Renewal Certification (certificate)	Same as Initial/Additional Cert. (certificate) fees above
Duplicate/Replacement Certificates/IDs	\$ 5
Reciprocal Certificates	Same as Initial/Additional Cert. (certificate) fees above
Late Renewal Fees	Double the Renewal Cert. (certificate) fees above

2. Exception

a. When water system operator or wastewater system operator training is conducted at a Louisiana university, including but not limited to training for the Class 5 certification level, the following certification (certificate) fees and provisions shall apply:

- i. fees for each separate certification (certificate) are \$25;
- ii. pursuant to an agreement reached with the department prior to the beginning of any water system operator or wastewater system operator training to be conducted at a Louisiana university, all or a portion of fees collected at a university may be retained by the university.

B. Renewal fees shall be considered late if received after April 30 of the first year (even-numbered year) of the biennial renewal cycle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1142(F) and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002), amended LR 33:

**§7337. Reciprocity**

A. Reciprocity shall be granted at the discretion of the committee of certification, without examination, to holders

of comparable certificates issued by other states, territories, or possessions of the United States. The applicant for a certificate under the reciprocity clause must submit his application on an official application blank, obtainable from the administrator. The application must be accompanied by the appropriate fee. The applicant must submit a copy of his certificate or other proof, satisfactory to the committee of certification that he holds a certificate issued by a governmental agency of another state, territory or possession of the United States. Such certificates must have been received after passage of an examination at least equivalent to that given by the Louisiana committee of certification for the level of competency for which application is made.

B. The burden of proof to submit sufficient information for the committee of certification's consideration shall be upon the applicant. If, after receiving such an application, the committee of certification is satisfied that the applicant qualifies for a certificate, it may, at its discretion award him a certificate in the appropriate grade. A reciprocal certificate will not ordinarily be issued unless the applicant is employed, has accepted employment, or at a minimum has applied for employment at a Louisiana water or wastewater facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002), amended LR 33:

#### **§7339. Notification**

A. Failure to receive any notices previously mentioned does not relieve the certificate holder or applicant from complying with the rules of the committee of certification. The burden is upon the certificate holder or applicant to provide the committee of certification with a current mailing address.

B. Any request for applications, training course approvals, reciprocity, etc., and/or questions on operator certification should be addressed to:

Administrator, Operator Certification Program  
DHH-OPH  
CEHS Mail Bin # 6  
P.O. Box 4489, Box 6  
Baton Rouge, LA 70821-4489.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002), amended LR 33:

### **Part XIII. Sewage Disposal**

#### **Chapter 3. General Requirements for Sewerage Disposal**

##### **[formerly Chapter 13 Subpart B]**

#### **§303. Responsible Parties**

##### **[formerly paragraph 13:003]**

A. A person who owns, operates, manages, or otherwise controls any premises, shall provide for sewage disposal in a manner which is in compliance with this Code.

B. All sewerage systems shall be under the supervision and control of a duly certified operator in accord with the requirements of the State Operator Certification Act [Act 538 of 1972, as amended (R.S. 40:1141-1151)] and LAC 48:Chapter 73. Exception: The operator of an individual sewerage system having a treatment capacity of 1,500

gallons per day or less which is used in a residential application shall not be required to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(6), R.S. 40:5(9)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002), amended LR 33:

#### **Family Impact Statement**

1. The Effect on the Stability of the Family. When compliance with these code requirements are achieved, the likelihood of a family member becoming ill via transmission of a water-borne disease is lessened. Keeping family members healthy and productive will assist in maintaining the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. No known impact.

3. The Effect on the Functioning of the Family. When compliance with these code requirements are achieved, the likelihood of a family member becoming ill via transmission of a water-borne disease is lessened. Keeping family members healthy and productive will assist in maintaining the smooth functioning of the family.

4. The Effect on Family Earnings and Family Budget. For those families in which a family member currently holds either a Class 1 or Class 2 water treatment certificate and is employed by an affected water supply system, upon compliance with the changes proposed in the rule, the family earnings should increase based upon the average pay to the operators presently holding Class 3 water treatment positions. In general, families which are connected to those water supply systems affected by the proposed rule may be asked to pay a small increase in their water bill to cover the costs associated with compliance.

5. The Effect on the Behavior and Personal Responsibility of Children. No known impact.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The ability of the family or local government to perform the function as contained in the proposed rule will be minor since the existing rule presently covers many of the same requirements. The proposal will require an upgrade in the Class (or level) of water treatment certificate held by operators of affected water supply systems. Normally, this will involve a period of study or training followed by an examination.

DHH-OPH will conduct a public hearing at 1:30 p.m. on Tuesday, September 25, 2007, in Room 118 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets. (cater-corner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Friday, September 28, 2007 at COB, 4:30 p.m., and should be addressed to Ms. Stacy Williams, Administrator, Operator Certification Unit, Engineering Services Section, Center for Environmental

Health Services, Office of Public Health, CEHS Mail Bin # 6, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7494. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street, Room 121-24, Baton Rouge, LA 70802.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Water and Wastewater Operator  
Certification and Sewage Disposal**

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

This rule proposes to require a minimum Class 3 Water Treatment Certificate for operators who work at: 1) water supply systems using surface water or ground water under the direct influence of surface water as its source of water supply in the production of potable water and 2) water supply systems using groundwater as its source of water supply and two or more mechanical units and/or chemical feed units in the production of potable water. The rule also provides language to clarify the on-site requirement of water treatment operators and addresses the method for the collection of certification fees and the optional Class 5 Level of certification. Additionally, the rule incorporates, by reference into the State Sanitary Code, the requirement that sewerage systems be under the supervision and control of certified wastewater operators.

DHH-Office of Public Health will incur an expense of approximately \$1,020 in FY07/08 to have the Notice of Intent and final rule published in the Louisiana Register. The agency has sufficient self-generated revenues to cover this cost.

In addition, the Class 3 Water Treatment rule changes could affect 181 water supply systems that are owned by state or local governments (179 local and 2 state). The affected entities could incur costs for salary pay changes, testing, and certification fees to upgrade water treatment operators to a Class 3. Salary costs cannot be determined because pay structures vary from system to system. The cost to upgrade an operator to a Class 3 is approximately \$135 (includes study materials and the cost of exams and certificates). DHH is actively working to re-establish EPA's Reimbursement Grant program to assist small water systems (serving less than 3,300 persons) in paying for training and other expenses related to achieving up to a Class 2 certification. Systems will be given three years to comply.

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

Adoption of the proposed amendments relative to the Class 3 operator certification is expected to affect 577 public water systems (179 local, 2 state, 2 federal, 394 private). These are water supply systems that serve a population of 5,000 or less.

It is anticipated that implementation of this proposed rule will increase Fees and Self-Generated collections for OPH by approximately \$7,000 in FY 07/08 (based on 200 operators achieving Class 3), \$11,445 in FY 08/09 (based on 327 operators achieving Class 3), and \$1,750 in FY 09/10 (based on 50 operators achieving Class 3). These collections are based on each system upgrading one operator, at the rate of \$5 per exam and an average cost of \$30 per applicant for the issuance of certificates.

The state or local governmental units that own the water supply systems affected by these rule changes may determine the need to increase the revenue collections (i.e., increase water bills) to cover any increased costs of complying with the proposed operator certification rule.

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

It is estimated that the 394 privately owned water systems and the 2 federal owned water systems will also incur the same costs as the state and local owned water supply systems to upgrade operators to a Class 3. For privately owned and non-governmentally owned systems, the Public Service Commission determines the amount of any rate increases based on the business plan submitted by the water or wastewater system.

Class 1 or Class 2 Water Treatment operators who achieve a Class 3 Water Treatment certificate could benefit economically because of a higher salary.

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

Affected individuals will possess a higher-level professional license, which could open employment opportunities both within the state as well as within other states that have reciprocal agreements with Louisiana. Upon adoption of this rule, there may be an initial shortage of Class 3 operators based upon the number of systems this rule will affect.

Sharon G. Howard  
Assistant Secretary  
0708#099

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Personal Care Attendant Services  
Licensing Standards  
(LAC 48:I.7701-7785)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.7701-7785 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2120.1-7 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 Services, Office of the Secretary, Division of Licensing and Certification adopted provisions governing the licensing of personal care attendant services (*Louisiana Register*, Volume 13, Number 4). The Department of Social Services, Office of the Secretary, Bureau of Licensing amended the provisions governing licensure fees (*Louisiana Register*, Volume 25, Number 12). Act 483 of the 2005 Regular Session of the Louisiana Legislature transferred the authority to license these services from the Department of Social Services to the Department of Health and Hospitals. The Department of Health and Hospitals, Office of the Secretary, Bureau of

Health Services Financing now proposes to amend the provisions of the April 20, 1987 and December 20, 1999 rules.

## **Title 48**

### **PUBLIC HEALTH—GENERAL**

#### **Part 1. General Administration**

#### **Subpart 3. Licensing and Certification**

#### **Chapter 77. Personal Care Attendant Services**

##### **§7701. Personal Care Attendant Services**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

##### **§7703. Responsibility for Care Planning**

A. - A.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

##### **§7705. Qualification of Team Members**

A. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

##### **§7707. Basic Activities**

A. - A.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

##### **§7709. Initial Application Process**

A. All Personal Care Attendant Services Providers (PCASP) shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for direct service providers in the state of Louisiana. It shall be unlawful to operate a PCASP agency without DHH licensure.

B. An application packet for licensing as a PCASP shall be obtained from the department. A completed application packet for the PCASP shall be submitted to and approved by the department prior to an applicant providing services.

C. A separately licensed PCASP shall not use a doing business as (DBA) name which is the same as the name of another PCASP licensed by the department.

D. An initial applicant shall submit a completed licensing packet including:

1. a licensing application with accompanying non-refundable fee;
2. a disclosure of ownership;
3. approval of the premises from the Office of the State Fire Marshal;

4. a health inspection certification of the premises from the Office of Public Health;

5. a zoning approval from local governmental authorities;

6. a criminal background check on all owners unless the owner holds a professional license issued by a state licensing board;

7. verification of sufficient assets equal to \$100,000 or the cost of three months of operation, whichever is less, or a letter of credit equal to \$100,000 or the cost of three months of operation, whichever is less;

8. proof of financial viability; and

9. an organizational chart with the names and position titles of persons currently employed.

E. If the applicant fails to submit a completed licensing packet within 90 days of the date the initial application is received, the application shall be closed. In order to start the process again, the applicant must submit a new packet and initial licensing fee.

F. Once an applicant is notified in writing by the department that their application is approved, they must contact the department within 30 days from the date of the notice to schedule an initial survey. Failure to do so shall result in the application being denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

##### **§7711. Surveys**

A. Upon approval of the initial application by the department, the applicant will receive a letter so they may operate temporarily pending an initial licensure survey to determine if the PCASP is in compliance with all licensing regulations. Prior to scheduling and approval of the initial survey, applicants must be fully operational, in compliance with all licensing standards and providing care to only one client at the time of the initial survey. The PCASP shall notify the department at the time that services are initiated for the client and must provide the client with the department's toll free complaint line number.

B. In the event the initial licensing survey reveals that a PCASP is non-compliant with regulations and it is determined that the non-compliance poses a threat to the health and safety of a client, the department shall deny the initial license. The PCASP shall transfer the one client and close immediately.

C. The department shall conduct a licensing survey at intervals as it deems necessary to determine compliance with licensing regulations. These surveys shall be unannounced.

D. The department shall conduct a complaint investigation for a complaint received against a PCASP. A complaint survey shall be unannounced.

E. A PCASP shall make any information which the PCASP is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to representatives of the department.

F. If a deficient practice is cited during any licensing or complaint survey, the PCASP must submit a plan of

correction and a follow-up survey may be conducted to ensure correction of the deficient practice(s).

G. Sanctions may be imposed by the department for violation of any state or federal statute, regulation or rule governing health care services as authorized by R.S. 40:2199.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7713. Issuance of License**

A. The department shall have authority to issue the following types of licenses.

1. A full license may be issued only to applicants that are in substantial compliance with all applicable federal, state, and local laws, regulations and rules. The license shall be valid until the expiration date shown on the license unless the department determines otherwise.

2. A provisional license may be issued to those existing licensed PCASP's which do not meet the criteria for full licensure. A provisional license shall be valid for not more than six months.

a. A PCASP with a provisional license may be issued a full license if, at the follow-up survey, the PCASP has corrected the deficient practice(s). A full license will be issued for the remainder of the year until the PCASP's license anniversary date.

b. The department may re-issue a provisional license or initiate a revocation of a provisional license when the PCASP fails to correct deficient practice(s) within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by the department for the following reasons including, but not limited to:

i. the PCASP has more than five deficient practices during any one survey or the scope and severity of any deficiency cited places person(s) receiving services at risk for more than minimal harm;

ii. the PCASP has more than three valid complaints during a one-year period;

iii. there is a documented incident placing a client at risk; or

iv. the PCASP fails to correct deficient practices within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

B. The license shall be posted in a conspicuous place on the premises.

C. A license shall be valid only for the PCASP to which it is issued and only for that specific geographic business address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.

D. Any change regarding the PCASP's name, geographical or mailing address, telephone number, operational hours, key administrative staff or any combination thereof must be reported in writing to the Health Standards Section within five working days of the change. Any change which requires a change in the license shall be accompanied by a \$25 dollar fee. A request for a duplicate license shall be accompanied by a \$25 dollar fee.

E. When a change of ownership (CHOW) occurs, the PCASP shall notify the Health Standards Section in writing at least 15 days prior to the effective date of the CHOW. A copy of the legal document showing the transfer of ownership shall be provided to Health Standards at least five working days prior to the effective date of the CHOW. The license of a PCASP is not transferable to any other PCASP or individual. A license cannot be sold. The new owner must submit all documents required for a new license including the licensing fee.

F. A license renewal fee must be submitted annually to the Department prior to the expiration of the license.

G. A PCASP that is under license revocation or has surrendered their license may not undergo a change of ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7715. Types of Licenses and Expiration Dates**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7717. Reapplication**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7719. The Denial, Revocation or Non-Renewal of a License**

A. The department may deny an application for a license, refuse to renew a license or revoke a license in accordance with the provisions of the Administrative Procedures Act. There shall be no appeal if the license has expired.

B. A PCASP's license may not be renewed or may be revoked for any of the following reasons including, but not limited to:

1. failure to be in substantial compliance with the PCASP licensing regulations;

2. failure to uphold client rights whereby deficient practice may result in harm, injury, or death of a client;

3. failure to protect a client from a harmful act of an employee including, but not limited to:

a. abuse, neglect, exploitation, and extortion;

b. an action posing a threat to a client or public health and safety;

c. coercion;

d. threat;

- e. intimidation; or
  - f. harassment;
4. failure to follow federal or state law regarding notification of all suspected cases of neglect, criminal activity or mental or physical abuse, or any combination thereof;
5. knowingly making a false statement in any of the following:
- a. application for licensure;
  - b. data forms;
  - c. clinical records;
  - d. matters under investigation by the department or Attorney General's office; or
  - e. information or billing submitted for reimbursement from any payment source;
6. the use of false, fraudulent or misleading advertising;
7. an owner or administrator pleading guilty or nolo contendere to a felony, or being convicted of a felony as documented by a certified copy of the court record. If the applicant is a firm or corporation, a license may also be immediately denied or revoked when any of its members, officers or the person designated to manage or supervise client care is convicted of a felony. For purposes of this paragraph, conviction of a felony means and includes:
- a. conviction of a criminal offense related to that person's involvement in any program under Medicaid or a Title XIX services program since the inception of these programs;
  - b. conviction of a felony relating to violence, abuse, and/or neglect of a person; or
  - c. conviction of a felony related to the misappropriation of property belonging to another person;
8. failure to comply with all reporting requirements in a timely manner as requested by the department;
9. documented evidence that the PCASP or any representative thereof has offered or received a bribe, harassed, solicited or received anything of economic value for the referral of any individual to use the services of any particular PCASP; or
10. non-operational status.

C. In the event a license is revoked, denied renewal or voluntarily surrendered, no other Personal Care, Respite, Supported Independent Living, Adult Day Care or Family Support service license application shall be accepted by the department from the owners of the revoked or denied agency for review and approval for a period of two years from the date of the final disposition of the revocation or denial action.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7720. Notice and Appeal**

A. Notice of the department's actions against the PCASP shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. A PCASP may request an administrative reconsideration of a deficiency which is the basis of the department's action. An administrative reconsideration is an informal process

conducted by a designated department official who did not participate in the initial decision to impose the adverse action. An administrative reconsideration shall be made solely on the basis of documents or oral presentations, or both, before the designated official and shall include the survey report, a statement of deficiency and any documentation the service provider may submit to the department when requesting the reconsideration. Correction of a deficiency shall not be a basis for reconsideration and an administrative reconsideration hearing may be held. A department spokesman and a PCASP services spokesman may make an oral presentation to the designated official during the administrative reconsideration. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of the Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part, or to request additional information from either the department or the PCASP.

C. Administrative Appeal Process. Upon denial or revocation of a license, or imposition of a fine by the department, the provider shall have the right to appeal such action by submitting a written request to the Bureau of Appeals within 30 days after receipt of the notification of the denial, revocation of a license or imposition of a fine.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7721. Terms of the Licensure**

A. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7723. Services for Different Handicaps**

A. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7725. Quarterly Staffing Report**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7727. Licensing Inspections**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7729. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care**

A. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7731. General Waiver**

A. The department shall have the authority to waive any of those standards which are inapplicable to the type of service to be rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7733. Personal Care Attendant Services**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7735. General Requirements**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7736. Operational Requirements**

A. In order to be considered operational and retain licensed status the provider must have at least one employee on duty at the business location a minimum of eight hours a day Monday through Friday. There must be direct care staff employed and available to be assigned to provide care and services to persons receiving services at all times. Staff must be designated to receive calls after business hours (including weekends and holidays) on a telephone owned by the business 24 hours per day, seven days a week within the region in which the provider is located.

B. Office Space. The PCASP's office shall be the physical site where the agency maintains staff to perform administrative functions, maintains personnel records, maintains client service records and holds itself out to the public as being a location of business for receipt of client referrals and provision of client services. The office shall have a separate entrance and exit from any other entity, business or trade. If office space is shared with another health related entity, the PCASP must operate independently and have a clearly defined scope of services.

C. Office space must meet the following requirements:

1. be in commercial office space, or if located in a residential area, it must be zoned for business and must be used solely for the operation of the business (may not be the personal residence of the business owner or any other individual);

2. comply with guidelines set forth by the Louisiana Office of the State Fire Marshal;

3. have a business telephone number that is accessible to persons receiving services 24 hours a day, seven days a week;

4. have a business fax number that is operational 24 hours a day, seven days a week;

5. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7737. Governing Body**

A. - A.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7739. Responsibilities of a Governing Body**

A. - A.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7741. Accessibility of Executive**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7743. Documentation of Authority to Operate**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§7745. Administrative File**

A. - A.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7747. Organizational Communication**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7749. Accounting**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7751. Confidentiality and Security of Files**

A. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7753. Administrative and Client Records**

A. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7755. Program Description**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7757. Transportation**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7759. External Professional Service**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7761. Personnel Policies**

A. A PCASP shall have written personnel policies and procedures that include, but are not limited to:

1. a plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation;

2. written job descriptions for each staff position, including volunteers;

3. a health assessment, to include at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated the Office of Public Health;

4. criminal history background checks for all unlicensed personnel which include a security check of the National Sex Offender Public Registry;

5. an employee grievance procedure;

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

7. prevention of discrimination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7763. Nondiscrimination**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7765. Recruitment**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7767. Screening**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7769. Orientation**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987),

repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7771. Training**

A. All non-licensed personal care attendant services direct care staff must meet minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 or a subsequently amended statute and be registered on the Louisiana Direct Service Worker Registry.

B. A provider shall ensure that each direct service worker completes no less than 16 hours of face to face training per year to ensure continuing competence. The training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing, LR 33:

#### **§7772. Required Staffing**

A. The provider shall be staffed at all times in sufficient numbers to properly safeguard the health, safety and welfare of the persons receiving services. Sufficient support staff shall be employed to ensure provision of personal care services as required by the comprehensive plan of care. There shall be back-up staff available to ensure that services to the client are uninterrupted in the event that the primary direct care worker for the client is unable to report to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7773. Evaluation**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7775. Personnel Practices**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7777. Abuse Reporting**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7779. Basic Rights**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7781. Self-Advocacy**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7783. Advocacy**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§7785. Grievance Procedures for Clients**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **Family Impact Statement**

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 no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Interested persons may submit written comments to Jerry Phillips, 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 Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

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

**RULE TITLE: Personal Care Attendant Services  
Licensing Standards**

**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 to the state other than cost of promulgation for FY 07-08. It is anticipated that \$2,380 (\$1,190 SGF and \$1,190 FED) will be expended in FY 07-08 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 FY 07-08. It is anticipated that \$1,190 will be collected in FY 07-08 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 amend provisions governing the licensing of personal care attendant services providers (approximately 1,200 providers) to clarify current licensing standards. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 07-08, FY 08-09, and FY 09-10.

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

This rule has no known impact on competition and employment.

Jerry Phillips  
Director  
0708#094

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Respite Care—Licensing Standards  
(LAC 48:I.8101-8167)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.8101-8167 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2120.1-7 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 Services, Office of the Secretary, Division of Licensing and Certification adopted provisions governing the licensing of respite care services providers (*Louisiana Register*, Volume 13, Number 4). The Department of Social Services, Office of the Secretary, Bureau of Licensing amended the provisions governing licensure fees (*Louisiana Register*, Volume 25, Number 12). Act 483 of the 2005 Regular Session of the Louisiana Legislature transferred the authority to license these services from the Department of Social Services to the

Department of Health and Hospitals. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing now proposes to amend the provisions of the April 20, 1987 and December 20, 1999 Rules.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part 1. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 81. Respite Care**

**§8801. Initial Application Process**

A. All respite care services providers (RCSP) shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for direct service providers in the State of Louisiana. It shall be unlawful to operate an RCSP agency without DHH licensure.

B. An application packet for licensing as an RCSP shall be obtained from the department. A completed application packet for the RCSP shall be submitted to and approved by the department prior to an applicant providing services.

C. A separately licensed RCSP shall not use a doing business as (DBA) name which is the same as the name of another RCSP licensed by the department.

D. An initial applicant shall submit a completed licensing packet including:

1. a licensing application with accompanying non-refundable fee;
2. a disclosure of ownership;
3. approval of the premises from the Office of the State Fire Marshal;
4. a health inspection certification of the premises from the Office of Public Health;
5. a zoning approval from local governmental authorities;
6. a criminal background check on all owners unless the owner holds a professional license issued by a state licensing board;
7. verification of sufficient assets equal to \$100,000 or the cost of three months of operation, whichever is less, or a letter of credit equal to \$100,000 or the cost of three months of operation, whichever is less;
8. proof of financial viability; and
9. an organizational chart with the names and position titles of persons currently employed.

E. If the applicant fails to submit a completed licensing packet within 90 days of the date the initial application is received, the application shall be closed. In order to start the process again, the applicant must submit a new packet and initial licensing fee.

F. Once an applicant is notified in writing by the department that their application is approved, they must contact the department within 30 days from the date of the notice to schedule an initial survey. Failure to do so shall result in the application being denied.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8103. Review of Applications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8104. Surveys**

A. Upon approval of the initial application by the department, the applicant will receive a letter so they may operate temporarily pending an initial licensure survey to determine if the RCSP is in compliance with all licensing regulations. Prior to scheduling and approval of the initial survey, applicants must be fully operational, in compliance with all licensing standards and providing care to only one client at the time of the initial survey. The RCSP shall notify the department at the time that services are initiated for the client and must provide the client with the department's toll free complaint line number.

B. In the event the initial licensing survey reveals that a RCSP is non-compliant with regulations and it is determined that the non-compliance poses a threat to the health and safety of a client, the department shall deny the initial license. The RCSP shall transfer the one client and close immediately.

C. The department shall conduct a licensing survey at intervals as it deems necessary to determine compliance with licensing regulations. These surveys shall be unannounced.

D. The department shall conduct a complaint investigation for a complaint received against an RCSP. A complaint survey shall be unannounced.

E. An RCSP shall make any information which the RCSP is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to representatives of DHH.

F. If a deficient practice is cited during any licensing or complaint survey, the RCSP must submit a plan of correction and a follow-up survey may be conducted to ensure correction of the deficient practice(s).

G. Sanctions may be imposed by the department for violation of any state or federal statute, regulation or rule governing health care services as authorized by R.S. 40:2199.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8105. Issuance of a License**

A. The department shall have authority to issue the following types of licenses.

1. A full license may be issued only to applicants that are in substantial compliance with all applicable federal, state, local laws, regulations and rules. The license shall be valid until the expiration date shown on the license unless the department determines otherwise.

2. A provisional license may be issued to those existing licensed RCSP which do not meet the criteria for full licensure. A provisional license shall be valid for not more than six months.

a. An RCSP with a provisional license may be issued a full license if, at the follow-up survey, the RCSP has corrected the deficient practice(s). A full license will be issued for the remainder of the year until the RCSP's license anniversary date.

b. The department may re-issue a provisional license or initiate a revocation of a provisional license when the RCSP fails to correct deficient practice(s) within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by the department for the following reasons including, but not limited to:

i. the RCSP has more than five deficient practices during any one survey or the scope and severity of any deficiency cited places person(s) receiving services at risk for more than minimal harm;

ii. the RCSP has more than three valid complaints during a one-year period;

iii. there is a documented incident placing a client at risk; or

iv. the RCSP fails to correct deficient practices within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

B. The license shall be posted in a conspicuous place on the premises.

C. A license shall be valid only for the RCSP to which it is issued and only for that specific geographic business address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.

D. Any change regarding the RCSP's name, geographical or mailing address, telephone number, operational hours or key administrative staff or any combination thereof, must be reported in writing to the Health Standards Section within five working days of the change. Any change which requires a change in the license shall be accompanied by a \$25 fee. A request for a duplicate license shall be accompanied by a \$25 fee.

E. When a change of ownership (CHOW) occurs, the RCSP shall notify the Health Standards Section in writing at least 15 days prior to the effective date of the CHOW. A copy of the legal document showing the transfer of ownership shall be provided to Health Standards at least five working days prior to the effective date of the CHOW. The license of an RCSP is not transferable to any other RCSP or individual. A license cannot be sold. The new owner must submit all documents required for a new license including the licensing fee.

F. A license renewal fee must be submitted annually to the department prior to the expiration of the license.

G. An RCSP that is under license revocation or has voluntarily surrendered their license may not undergo a change of ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8107. Types of Licenses and Expiration Dates**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:24621 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### **§8109. Reapplication**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### **§8111. The Denial, Revocation, or Non-Renewal of a License**

A. The department may deny an application for a license, refuse to renew a license or revoke a license in accordance with the provisions of the Administrative Procedures Act. There shall be no appeal if the license has expired.

B. An RCSP's license may not be renewed or may be revoked for any of the following reasons including, but not limited to:

1. failure to be in substantial compliance with the RCSP licensing regulations;
2. failure to uphold client rights whereby deficient practice may result in harm, injury or death of a client;
3. failure to protect a client from a harmful act of an employee including, but not limited to:
  - a. abuse, neglect, exploitation and extortion;
  - b. an action posing a threat to a client or public health and safety;
  - c. coercion;
  - d. threat;
  - e. intimidation; or
  - f. harassment;
4. failure to follow federal or state law regarding notification of all suspected cases of neglect, criminal activity, or mental or physical abuse, or any combination thereof;
5. knowingly making a false statement in any of the following:
  - a. application for licensure;
  - b. data forms;
  - c. clinical records;
  - d. matters under investigation by the department or Attorney General's office; or
  - e. information or billing submitted for reimbursement from any payment source;
6. the use of false, fraudulent or misleading advertising;
7. an owner or administrator pleading guilty or nolo contendere to a felony or being convicted of a felony as documented by a certified copy of the court record. If the applicant is a firm or corporation, a license may also be immediately denied or revoked when any of its members, officers, or the person designated to manage or supervise

client care is convicted of a felony. For purposes of this Paragraph, conviction of a felony means and includes:

- a. conviction of a criminal offense related to that person's involvement in any program under Medicaid or a Title XIX services program since the inception of these programs;
- b. conviction of a felony relating to violence, abuse, and/or neglect of a person; or
- c. conviction of a felony related to the misappropriation of property belonging to another person;
8. failure to comply with all reporting requirements in a timely manner as requested by the department;
9. documented evidence that the RCSP or any representative thereof has offered or received a bribe, harassed, solicited or received anything of economic value for the referral of any individual to use the services of any particular RCSP; or
10. non-operational status.

C. In the event a license is revoked or denied renewal or voluntarily surrendered their license, no other Personal Care Assistant, Respite, Supervised Independent Living, Adult Day Care or Family Support service license application shall be accepted by the department from the owners of the revoked or denied agency for review and approval for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### **§8112. Notice and Appeal**

A. Notice of the department's actions against the RCSP shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. An RCSP may request an administrative reconsideration of a deficiency which is the basis of the department's action. An administrative reconsideration is an informal process conducted by a designated department official who did not participate in the initial decision to impose the adverse action. An administrative reconsideration shall be made solely on the basis of documents or oral presentations, or both, before the designated official and shall include the survey report, a statement of deficiency and any documentation the service provider may submit to the department when requesting the reconsideration. Correction of a deficiency shall not be a basis for reconsideration and an administrative reconsideration hearing may be held. A department spokesman and an RCSP services spokesman may make an oral presentation to the designated official during the administrative reconsideration. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part or to request additional information from either the department or the RCSP.

C. Administrative Appeal Process. Upon denial or revocation of a license or imposition of a fine by the

department, the provider shall have the right to appeal such action by submitting a written request to the Bureau of Appeals within 30 days after receipt of the notification of the denial, revocation of a license, or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8113. Terms of the License**

A. Licenses in Louisiana specify the service which the provider is licensed to provide, the maximum number of clients which the provider may serve at one time, the ages which may be served and the types of handicapping conditions which may be served. These terms must be continuously met by the provider; failure to do so is grounds for revocation of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8115. Services for Different Handicaps**

A. A provider will not be licensed to serve more than one program office type of handicapped client until the provider has been in operation and has consistently met applicable requirements for one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8117. Quarterly Staffing Report**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8119. Licensing Inspections**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8121. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care**

A. The building site shall be approved by the Division of Licensing and Certification prior to beginning of any construction. The site shall have good drainage and not subject to flooding. The site shall not be located in an area that would present a hazard to those being served. Plans and specifications must be prepared by a licensed architect or engineer. Three sets of complete plans and specifications must be submitted for approval to the Division of Licensing

and Certification. The Division of Licensing and Certification will forward one set to the Office of Preventive and Public Health Services, and one set to the Office of State Fire Marshal.

B. The third set will be reviewed by the Division of Licensing and Certification and the Division of Engineering and Consulting Services. All three agencies must issue an approval of the plans and specifications prior to beginning construction. The Division of Licensing and Certification will issue the letter authorizing the start of construction after receiving approval from the Office of Preventive and Public Health Services, the Office of State Fire Marshal, and the Division of Engineering and Consulting Services.

C. The Division of Licensing and Certification, the Office of Preventive and Public Health Services, and the Office of State Fire Marshal, shall have the authority to inspect the project at any stage to insure that the approved plans and specification are being followed. Final approval of the building must be obtained from these agencies after the building is completed and before it is occupied. A license shall issued by the Division of Licensing and Certification only after these final approvals have been obtained.

D. It shall be the responsibility of the provider to obtain any approvals from local authorities (such as zoning, building, fire, etc.) that may be needed in the particular city or parish.

E. All providers must be in conformity with the ASNI standards for the handicapped.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8123. General Waiver**

A. The department shall have the authority to waive any of those standards which are inapplicable to the type of service to be rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8125. Respite Care Services**

A. In addition to core requirements, respite care service providers are required to meet the requirements in the respite care service module. Some core requirements may be excepted. Non-programmatic standards do not apply to in-home respite care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8127. General Requirements**

A. General Requirements

1. A provider shall allow designated representatives of DHHR in the performance of their mandated duties to inspect all aspects of a provider's functioning which impact

on clients and to interview any staff member or client (if the client agrees to said interview).

a. A provider shall make any information which the provider is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to DHHR.

#### B. Governing Body

1. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the program/agency.

a. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership; and officers of the governing body; and terms of office of any officers.

b. When the governing body of a provider is comprised of more than one person, the governing body shall hold formal meetings at least twice a year.

c. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body, and by-laws specifying frequency of meetings and quorum requirements.

#### C. Responsibilities of a Governing Body

1. The governing body of a provider shall:

a. ensure the provider's compliance and conformity with the provider's charter;

b. ensure the provider's continual compliance and conformity with all relevant federal, state, local, and municipal laws and regulations;

c. ensure that the provider is adequately funded and fiscally sound;

d. review and approve the provider's annual budget;

e. ensure the review and approval of an annual external audit;

f. designate a person to act as chief administrator and delegate sufficient authority to this person to manage the provider;

g. formulate and annually review, in consultation with the chief administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices job descriptions and fiscal management;

h. annually evaluate the chief administrator's performance;

i. have the authority to dismiss the chief administrator;

j. meet with designated representatives of DHHR whenever required to do so;

k. inform designated representatives of DHHR prior to initiating any substantial changes in the services provided by the provider.

#### D. Accessibility of Executive

1. The chief administrator or a person authorized to act on behalf of the chief administrator shall be accessible to staff or designated representatives of DHHR at all times.

#### E. Documentation of Authority to Operate

1. A private provider shall have documentation of its authority to operate under state law.

#### F. Administrative File

1. A provider shall have an administrative file including:

a. documents identifying the governing body;

b. list of members and officers of the governing body and their addresses and terms of membership;

c. minutes of formal meetings and by-laws of the governing body, if applicable;

d. documentation of the provider's authority to operate under state law;

e. organizational chart of the provider;

f. all leases, contracts and purchase-of-service agreements to which the provider is a party;

g. insurance policies;

h. annual budgets and audit reports;

i. master list of all providers used by the provider.

#### G. Organizational Communication

1. A provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the client.

2. Any direct care employee of a provider shall have access to information from clients case records that is necessary for effective performance of the employee's assigned tasks.

3. A provider shall establish procedures which facilitates participation and feedback from staff, clients, families, and when appropriate, the community at large. This will be used in areas such as policy-making, planning and program development.

#### H. Accounting

1. A provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records in keeping with generally accepted accounting principles.

2. A provider shall demonstrate fiscal accountability through regular recording of its finances and annual external audit.

3. A provider shall not permit public funds to be paid, or committed to be paid, to any person to which any of the members of the governing body, administrative personnel, or members of the immediate families of members of the governing body or administrative personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the facility. The provider shall have a written disclosure of any financial transaction with the facility in which member of the governing body, administrative personnel, or his/her immediate family is involved.

#### I. Confidentiality and Security of Files

1. A provider shall have written procedures for the maintenance, security, and confidentiality of records. This shall include specifying who shall supervise the maintenance of records, and who shall have custody of records. This procedure shall also state to whom records can be released and the procedure for doing so. Records, including client as well as administrative, shall be the property of the provider and the provider, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. Employees of the provider shall not disclose or knowingly permit the disclosure of any information concerning the agency, the clients or his/her family, directly or indirectly, to any unauthorized person.

3. When the client is of majority age and noninterdicted, a provider shall obtain the client's written, informed permission prior to releasing any information from which the client or his/her family might be identified.

4. When a client is a minor or is interdicted, a provider shall obtain written, informed consent from the legally responsible person prior to releasing any information from which the client or his/her family might be identified.

5. A provider shall, upon request, make available information in the case records to the client, the legally responsible person. If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be damaging to a client, that information (only) may be withheld from the client except under court order. The provider may charge a reasonable fee for providing the above records.

6. A provider may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge or the provider's services, or similar educational purposes, provided that names are deleted, providers which have on-grounds educational programs shall comply with federal and state laws governing educational records.

7. A provider shall not release a personnel file without the employee's written permission except in accordance with state law.

#### J. Records—Administrative and Client

1. A provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

2. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of in accordance with state laws.

3. A provider shall have sufficient space, facilities and supplies for providing effective record keeping services.

4. A provider shall have a written record for each client which shall include:

a. the name, sex, race, birthdate of the client, address of the client's current place of employment, school, or day provider, as appropriate;

b. other identification date including court status and/or legal status;

c. the names, addresses and phone numbers of other persons or providers involved with the client's plan/case. This shall include the client's physician;

d. a provider shall maintain limited health records including a description of any serious or life threatening medical condition of the client. This shall include a description of any current treatment or medication necessary for the treatment of any serious or life threatening medical condition or known allergies.

5. A provider shall have a written record for each employee which includes:

a. the application for employment and/or résumé;

b. references;

c. any required medical examination;

d. all required documentation of appropriate status which includes:

i. valid driver's license for operating provider vehicles or transporting clients;

ii. professional credentials/certification required to hold the position;

e. periodic, at least annual, performance evaluation;

f. employee's starting and termination dates along with salary paid;

g. employee shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### §8128. Operational Requirements

A. In order to be considered operational and retain licensed status the provider must have at least one employee on duty at the business location a minimum of eight hours per day Monday through Friday. There must be direct care staff employed and available to be assigned to provide care and services to persons receiving services at all times. Staff must be designated to receive calls after business hours (including weekends and holidays) on a telephone owned by the business 24 hours per day, seven days a week, within the region in which the provider is located.

B. Office Space. The RCSP's office shall be the physical site where the agency maintains staff to perform administrative functions, maintains personnel records, maintains client service records and holds itself out to the public as being a location of business for receipt of client referrals and provision of client services. The office shall have a separate entrance and exit from any other entity, business or trade. If office space is shared with another health related entity, the RCSP must operate independently and have a clearly defined scope of services.

C. Office space must meet the following requirements:

1. be in commercial office space or if located in a residential area, it must be zoned for business and must be used solely for the operation of the business (may not be the personal residence of the business owner or any other individual);

2. comply with guidelines set forth by the Louisiana Office of the State Fire Marshal;

3. have a business telephone number that is accessible to persons receiving services 24 hours a day, seven days a week;

4. have a business fax number that is operational 24 hours a day, seven days a week;

5. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### §8129. Program and Services

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8130. Required Staffing**

A. The provider shall be staffed at all times in sufficient numbers to properly safeguard the health, safety and welfare of the persons receiving services as required by these regulations. Sufficient support staff shall be employed to ensure provision of respite care services as required by the comprehensive plan of care. There shall be back-up staff available to ensure that services to the client are uninterrupted in the event that the primary direct care worker for the client is unable to report to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8131. Personnel Policies**

A. A RCSP shall have written personnel policies and procedures that include, but are not limited to:

1. a plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation;

2. written job descriptions for each staff position, including volunteers;

3. a health assessment to include at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated by the Office of Public Health;

4. criminal history background checks for all unlicensed personnel which includes a security check of the National Sex Offender Public Registry;

5. an employee grievance procedure;

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

7. prevention of discrimination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8132. Training**

A. All non-licensed respite care services direct care staff must meet minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 or a subsequently amended statute, and be registered on the Louisiana Direct Service Worker Registry.

B. A provider shall ensure that each direct service worker completes no less than 16 hours of face to face training per year to ensure continuing competence. The training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8133. Client Rights**

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8135. Individual Service Plan**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8137. Daily Aspects of Care**

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8139. Clothing**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8141. Health Aspects of Care**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8143. Food and Nutrition**

A. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8145. Money**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§8147. Discharge**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8149. Privacy**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8151. Contact with Family and Collaterals**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8153. Participation in Program Development**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8155. Disciplinary Safeguards**

A. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8157. Furnishings and Equipment for Center Based Respite Care**

A. - A.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8159. Play Space and Equipment**

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8161. Health and Safety**

A. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8165. Maintenance**

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§8167. In or Out-of-Home**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**Family Impact Statement**

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 no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Interested persons may submit written comments to Jerry Phillips, 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 Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

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

**RULE TITLE: Respite Care—Licensing Standards**

**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 to the state other than cost of promulgation for FY 07-08. It is anticipated that \$2,244 (\$1,122 SGF and \$1,122 FED) will be expended in FY 07-08 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 FY 07-08. It is

anticipated that \$1,122 will be collected in FY 07-08 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 amend provisions governing the licensing of respite care services providers (approximately 600 providers) to clarify current licensing standards. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 07-08, FY 08-09, and FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips  
Director  
0708#093

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers—Children's Choice Service Cap Increase(LAC 50:XXI.11301)**

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.11301 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 repromulgated all of the Rules governing the Children's Choice Waiver under the Louisiana Administrative Code (*Louisiana Register*, Volume 28, Number 9). The Children's Choice Waiver provides services with greater flexibility which is appropriate to families who care for children with disabilities. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the Children's Choice Waiver to increase the service cap (*Louisiana Register*, Volume 33, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 20, 2007 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 because it will allow for increased utilization of needed services.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community-Based Services  
Waivers**

**Subpart 9. Children's Choice**

**Chapter 113. Service**

**§11301. Service Cap**

A. Effective May 20, 2007, Children's Choice services are capped at \$17,000 per individual per plan of care year.

B. ...

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 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, 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.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

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

**RULE TITLE: Home and Community-Based Services  
Waivers—Children's Choice Service Cap Increase**

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$451,622 for FY 07-08, \$451,520 for FY 08-09 and \$451,520 for FY 09-10. In FY 07-08, \$204 (\$102 SGF and \$102 FED) is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,148,582 for FY 07-08, \$1,148,480 for FY 08-09 and \$1,148,480 for FY 09-10. In FY 07-08, \$102 is included 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, which continues the provisions of the May 20, 2007 Emergency Rule, proposes to amend the provisions governing the Children's Choice Waiver to increase the annual service cap on the amount of services each individual may be able to receive (approximately 800 recipients). It is anticipated that implementation of this proposed rule will increase program expenditures in the Children's Choice Waiver program by approximately \$1,600,000 for FY 07-08, \$1,600,000 for FY 08-09 and \$1,600,000 for FY 09-10.

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.

Jerry Phillips  
Medicaid Director  
0708#096

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Office for Citizens with Developmental Disabilities**

**Home and Community Based Services Waivers—New  
Opportunities Waiver—Emergency Opportunities  
(LAC 50:XXI.13707)**

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.13707 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. 49:95(B)(1) et seq.

The Appropriations Bill of the 2004 Regular Session of the Legislature allocated funds for the establishment of 66 emergency slots for the New Opportunities Waiver (NOW) program and mandated the development and enforcement of Rules established under the Administrative Procedure Act to create an equitable and precise methodology for defining an emergency and the issuance of such slots. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated a Rule that established the provisions governing emergency waiver opportunities. In addition, the bureau repealed the Rules governing programmatic allocation of MR/DD Waiver slots and adopted those provisions to govern the programmatic allocation of waiver opportunities for NOW (*Louisiana Register*, Volume 31, Number 11). The department promulgated an Emergency Rule which amended the provisions of the November 20, 2005 Rule to create an additional 100 emergency waiver opportunities (*Louisiana Register*, Volume 33, Number 3). This proposed Rule is being promulgated to continue the provisions of the March 1, 2007 Emergency Rule.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services  
Waivers**

**Subpart 11. New Opportunities Waiver  
Chapter 137. General Provisions  
§13707. Programmatic Allocation of Waiver  
Opportunities**

A. - C.6. ...

7. One hundred and sixty-six waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that a waiver opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 166 waiver opportunities are filled, then supports and services based on the priority determination system will be identified and addressed through other resources currently available for individuals with developmental disabilities.

C.8. - D. ...

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, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:

**Family Impact Statement**

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 positive impact on family functioning, stability or autonomy as described in R.S. 49:972 as it will allow more qualifying individuals access to NOW services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, 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.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Home and Community Based Services  
Waivers—New Opportunities Waiver—Emergency  
Opportunities**

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state

of \$1,570,694 for FY 07-08, \$1,617,674 for FY 08-09 and \$1,666,205 for FY 09-10. In FY 07-08, \$272 (\$136 SGF and \$136 FED) is included 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 \$3,994,985 for FY 07-08, \$4,114,695 for FY 08-09 and \$4,238,135 for FY 09-10. In FY 07-08, \$136 is included 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, which continues the provisions of the March 1, 2007 Emergency Rule, proposes to amend the provisions governing the New Opportunities Waiver to create an additional 100 emergency waiver opportunities. It is anticipated that implementation of this proposed rule will increase program expenditures in the New Opportunities Waiver Program by approximately \$5,565,407 for FY 07-08, \$5,732,369 for FY 08-09 and \$5,904,340 for FY 09-10.

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.

Jerry Phillips  
Medicaid Director  
0708#095

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

#### Home and Community-Based Services Waivers Residential Options Waiver (LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to adopt LAC 50:XXI Chapters 161-169 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 currently provides community-based services to individuals who meet the level of care requirements for institutional placement through five Medicaid home and community-based services (HCBS) waivers, as authorized under §1915(C) of the Social Security Act. The Medicaid HCBS waivers are: the Adult Day Health Care Waiver, Elderly and Disabled Adult Waiver, Children's Choice Waiver, New Opportunities Waiver and Supports Waiver. The Office for Citizens with Developmental Disabilities now proposes to implement a new HCBS waiver, hereafter referred to as the Residential Options Waiver (ROW), to promote independence for individuals with developmental disabilities by strengthening their capacity for self-care, self-sufficiency and community integration through a wide array of services, supports and residential options. The ROW is a service system centered

on the needs and preferences of the waiver recipients and provides an on-going opportunity for them to transition from intermediate care facilities for the mentally retarded (ICFs/MR).

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

#### Subpart 13. Residential Options Waiver

#### Chapter 161. General Provisions

#### §16101. Introduction

A. The Residential Options Waiver (ROW), a 1915-C waiver, is designed to enhance the long term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for the mentally retarded (ICF/MR) level of care.

B. The goal of the Residential Options Waiver is to promote independence through strengthening the individual's capacity for self-care, self-sufficiency and community integration utilizing a wide array of services, supports and residential options which best meets the individual's needs and preferences.

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, Office for Citizens with Developmental Disabilities, LR 33:

#### §16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option. This allows for greater flexibility in hiring, training and general service delivery issues.

B. The objectives of the ROW are to:

1. promote independence for recipients through the provision of services meeting the highest standards of quality and national best practices while ensuring health and safety through a comprehensive system of recipient safeguards;

2. offer an alternative to institutional care through the provision of an array of services and supports that promote community living, community inclusion and independence by enhancing, and not replacing, existing informal networks;

3. support recipients and their families in exercising their rights and sharing responsibility for their programs regardless of the method of service delivery; and

4. offer access to services on a short-term basis that would protect the health and safety of the recipient if the family or other care giver were unable to continue to provide care and supervision.

C. All of the services provided in the ROW are accessed through a single point of entry within the Office for Citizens with Developmental Disabilities (OCDD).

D. All services must be prior authorized. Prior authorization is completed through an independent entity contracted by the Department of Health and Hospitals.

E. All services must be delivered in accordance with the approved Individual Support Plan (ISP). The ISP shall be developed using a person-centered process coordinated by the support coordination agency.

1. Waiver recipients choose their support coordination and direct service provider agencies through a Freedom of Choice process.

F. The total expenditures available for each waiver recipient is established through an assessment of individual support needs and will not exceed the approved ICF/MR rate established for that individual.

G. No reimbursement for ROW services shall be made for a recipient who is admitted to an inpatient setting.

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, Office for Citizens with Developmental Disabilities, LR 33:

#### **§16105. Recipient Qualifications**

A. In order to qualify for services through the ROW, an individual must meet the definition for a developmental disability as defined in R.S. 28:451.2(12)(a)(b).

B. The individual must:

1. be a Louisiana resident and a citizen of the United States or a qualified alien;

2. meet the requirements for an ICF/MR level of care which requires active treatment for developmental disabilities under the supervision of a qualified mental retardation professional;

3. meet the financial eligibility requirements for the Medicaid Program as a member of the group of individuals who would be eligible for Medicaid if they:

a. were in a medical institution; or

b. need home and community-based services in order to remain in the community; and

c. have a special income level equal to 300 percent of the Supplemental Security Income (SSI) federal benefit rate; and

C. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

#### **§16107. Programmatic Allocation of Waiver Opportunities**

A. The Request for Services Registry, hereafter referred to as "the registry," shall be used to evaluate individuals for the Residential Options Waiver and to fill all waiver opportunities for persons with developmental disabilities. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated above, and the process continues until an eligible individual is assigned the waiver opportunity. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified.

B. Right of Refusal. An individual may be designated inactive on the registry upon written request to OCDD. When the individual determines that he is ready to begin the waiver evaluation process, he shall request, in writing, that his name be removed from inactive status. His original protected request date will be reinstated.

C. Utilizing the procedures described in subparagraph A, ROW opportunities will be offered with priority given to the individuals in the following groups:

1. participants in the Money Follows the Person Rebalancing Demonstration Grant of 2007 which includes:

a. residents of nursing facilities who have developmental disabilities and whose care is reimbursed at the rates established for infectious disease or technology dependent care;

b. residents of private ICFs/MR who choose to receive home and community-based waiver services and the providers voluntarily closes the licensed, Medicaid enrolled ICF/MR beds vacated by the individuals in order to fund ROW opportunities; and

c. residents of public ICFs/MR who are in licensed Medicaid enrolled beds and have chosen to receive home and community-based waiver services;

2. residents of six bed private ICFs/MR who choose to receive home and community-based waiver services and the providers voluntarily closes the licensed, Medicaid enrolled ICF/MR beds vacated by the individuals in order to fund ROW opportunities;

3. individuals served in the Host Home contracts as identified by OCDD or persons served in existing OCDD Host Home contracts as of the effective date of the ROW; and

4. the remaining opportunities will be allocated equally among the following groups, with any unused opportunities from these groups being equally distributed among the remaining groups:

a. 25 percent will be reserved for crisis diversion for those qualifying individuals who meet the criteria for emergency waiver opportunities;

b. 25 percent will be reserved for individuals with developmental disabilities who reside in nursing facilities and do not meet the criteria in Subparagraph C.1.a.;

c. 25 percent will be reserved for residents of private ICFs/MR, based on their registry protected date and on a first-come, first-served basis; and

d. 25 percent reserved capacity for qualifying individuals who request the ROW, based on their registry protected date and on a first-come, first-served basis.

D. Crisis Diversion or Emergency Waiver Opportunities. Requests for crisis diversion or emergency waiver opportunities shall be made through the regional administrative units (RAU) which are local and regional governmental entities responsible for coordination of services for individuals with developmental disabilities. To be considered for a crisis diversion or emergency waiver opportunity, the individual must need long-term supports, not temporary or short-term supports. All of the following criteria shall be used in the determination of priority for a crisis diversion or emergency waiver opportunity.

1. Urgency of Need. The individual will require further assessment for emergency services if one of the following situations exists:

- a. the caregiver is unable or unwilling to continue providing care;
- b. death of the caregiver and there are no other available supports;
- c. the caregiver is incapacitated and there are no other available supports due to physical or psychological reasons;
- d. intolerable temporary placement and immediate need for new placement; or
- e. other family crisis exists with no caregiver support available.

2. Level of Risk. The individual will be assessed to determine the risk to his health and safety in areas of daily living, health care and behavioral supports if an emergency waiver opportunity is not made available. Level of risk will be categorized as follows:

- a. High Risk. The individual's health or safety is at imminent risk without the requested developmental disability supports.
- b. Moderate Risk. The individual has a potential risk of losing his current level of health or safety without the requested developmental disability supports.
- c. Low Risk. The individual is at little or no risk of losing his current level of health or safety without the requested developmental disability supports.

3. Level of Unmet Needs. The individual's needs shall be identified and assessed to determine the level to which the needs are being met.

4. Adaptive Service Level Determination. The individual's service needs will be determined utilizing a standardized rating based on adaptive behavior levels.

5. Financial Resources Determination. Individual or family income shall be considered to determine whether it is adequate to meet unmet needs.

E. Individuals who enter the ROW and are on the RFSR for the NOW will retain their protected date for the NOW until July 1, 2008.

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, Office for Citizens with Developmental Disabilities, LR 33:

#### **§16109. Discharge Criteria**

A. Discharge Criteria. Recipients shall be discharged from the Residential Options Waiver if one of the following criteria is met:

- 1. loss of Medicaid financial eligibility;
- 2. loss of eligibility for an ICF/MR level of care;
- 3. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
- 4. change of residence to another state;
- 5. admission to an ICF/MR or nursing facility with the intent to stay and not to return to waiver services;
- 6. the health and welfare of the waiver recipient cannot be assured in the community through the provision of reasonable amounts of waiver services, i.e., the waiver recipient presents a danger to himself or others;
- 7. failure to cooperate in either the eligibility determination process or the initial or annual implementation of the approved ISP or the responsibilities of the ROW recipient; or

8. continuity of services is interrupted as a result of the recipient not receiving ROW services during a period of 30 consecutive days.

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, Office for Citizens with Developmental Disabilities, LR 33:

#### **Chapter 163. Covered Services**

##### **§16301. Assistive Technology**

A. Assistive Technology services enable individuals to increase, maintain or improve their ability to function more independently in their home or communities through the use of devices, controls and appliances specified in their ISP. This service also includes service(s) that directly assists recipients in the selection, acquisition, or use of an assistive technology device.

B. Assistive Technology services provided through the ROW includes the following services:

- 1. evaluation of the assistive technology needs of a recipient, including a functional evaluation of the impact of appropriate assistive technology services to the recipient in their customary environment;
- 2. purchase or lease of assistive technology devices for recipients, including adaptation, maintenance and replacement as necessary. This includes battery purchases and other reoccurring replacement items that contribute to ongoing maintenance of these devices;
- 3. coordination and use of necessary therapies, interventions or services with assistive technology devices associated with other services in the ISP;
- 4. training or technical assistance for the recipient, or where appropriate, the recipient's family members, legal guardian or responsible representative in the use and maintenance of devices, controls and appliances;
- 5. training or technical assistance for professionals or other individuals who provide services to, employ, or who are substantially involved in the major life functions of the recipient;
- 6. service contracts and other warranties; and
- 7. repair of all items purchased.

a. Separate payment will be made for repairs after expiration of the warranty when cost effective.

C. Assistive technology equipment covered through ROW may include the following devices:

- 1. assistive devices for individuals who are deaf or hearing impaired including:
  - a. visual alarms;
  - b. telecommunications devices for the deaf (TDDs);
  - c. telephone amplifying devices; and
  - d. other devices for the protection of health and safety;
- 2. assistive devices for individuals who are blind or visually impaired including:
  - a. tape recorders;
  - b. talking calculators;
  - c. magnifiers;
  - d. Braille writers;
  - e. talking computerized devices; and
  - f. other devices for the protection of health and safety;

3. environmental controls including devices to operate appliances, use telephones or open doors;

4. assistive devices for individuals with fine motor limitations including:

a. living and recreational home aides such as reachers, adaptive cooking devices and adapted games.

b. employment or school aides such as book holders, adapted writing devices, page turners and fine motor devices;

5. assistive devices for individuals with sensory processing disorder including multi-sensory devices such as bubble tubes, vestibular swings and tactile boards;

6. control interfaces to assist the person in controlling assistive technology such as keyboards and head and mouth sticks; and

7. other devices, controls, appliances specified in the recipient's ISP which are used to increase, maintain or improve his ability to function more independently in his home or community.

D. All assistive technology items must meet applicable manufacture, design and installation requirements.

E. Service Exclusions. Assistive technology devices that are of general utility or maintenance and have no direct medical or remedial benefit to the individual are excluded from coverage in the ROW.

F. Provider Qualifications. In order to enroll to participate in the Medicaid Program, assistive technology providers must furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies.

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, Office for Citizens with Developmental Disabilities, LR 33:

### **§16303. Community Living Supports**

A. Community living supports (CLS) are services provided to assist individuals with residing successfully in an individual or family home and to help them achieve and maintain the outcomes of increased independence, productivity and inclusion in the community. Utilizing teaching and support strategies, CLS focuses on achieving one or more of the goals outlined in the recipient's approved ISP. These services may be furnished through self-direction or through a licensed, enrolled agency.

B. Community living supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training which is intended to foster community inclusion and well-being, such as involvement in community recreational and leisure activities;

a. CLS providers may provide out-of-home support, community-integration planning (event/location identification and scheduling), transportation, travel training not related to vocational or habilitative services, or other supports needed for socialization skills development.

3. cognitive, communication tasks, adaptive skills which may include homemaker tasks, safety skills,

recognition of basic concepts, academic skills (outside of those skills mandated by the local education agency) and a variety of interpersonal communication objectives; and

a. CLS providers may work collaboratively with natural supports, the support coordinator, habilitation and vocational providers or professional services providers to identify areas that connect with the individual's choice of daily routine.

4. replacement behavior components which include those skills required to effectively address situations and antecedents of frequently occurring maladaptive or challenging behavior;

a. CLS providers may work, as directed by an assigned professional, to assist the person to develop skills necessary to reduce or eliminate episodes in which the individual becomes a danger to self or others.

b. The provider of this service shall provide 24-hour back-up and emergency staff to meet unpredictable needs of recipients in a way that promotes maximum dignity and independence while enhancing supervision, safety and security.

C. Place of Service. CLS services are furnished to adults and children who live in a home that is leased or owned by the recipient or his family. Services may be provided in the home or community, with the place of residence as the primary setting.

D. Community Living Supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. Recipients may share CLS staff when agreed to by the recipients, or their legal guardian, and when the health and welfare of each recipient can be assured.

1. The shared staff must be reflected on the recipients' Individual Support Plans and based on an individual-by-individual determination.

2. A shared rate must be billed when CLS staff is shared.

E. Service Exclusions

1. Staff providing services may not sleep during billable hours of Community Living Supports.

2. Routine care and supervision that is normally provided by the recipient's spouse or family, and services provided to a minor by the child's parent or step-parent, are not covered in the ROW.

3. The recipient may not live in the same home as CLS staff.

4. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered in the ROW.

5. Community living supports shall not be provided in a licensed respite care facility. Providers cannot bill for CLS provided at the same time, on the same day, as respite services are provided.

6. Community living supports services are not available to individuals receiving the following services:

a. shared living conversion;

b. shared living;

c. host home; or

d. companion care.

7. Community living supports cannot be provided at the same time that the recipient is receiving the following services:

- a. day habilitation;
- b. prevocational; or
- c. supported employment.

F. Provider Qualifications. CLS providers must possess a current, valid license as a Personal Care Attendant Agency.

1. Family members who provide CLS services must meet the same standards as providers who are unrelated to the 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, Office for Citizens with Developmental Disabilities, LR 33:

**§16305. Companion Care**

A. Companion care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion is a principal care provider who provides services in the recipient's home and lives with the recipient as a roommate. Companion care services may be furnished through self-direction or through a licensed provider organization as outlined in the recipient's ISP. This service includes:

- 1. providing assistance with all of the activities of daily living as indicated in the recipient's ISP;
- 2. community integration and coordination of transportation services, including medical appointments; and
- 3. providing medical and physical health care that can be delivered by unlicensed persons in accordance with Louisiana's Nurse Practice Act.

B. Companion care services are arranged by provider organizations that are subject to licensure. The companion is an employee of the provider organization and is responsible for providing limited, daily direct services to the recipient.

1. The companion shall be available in accordance with a pre-arranged time schedule and available by telephone for crisis support on short notice.

2. Services may be provided may be provided by a family member who is not the recipient's spouse, legally responsible relative or legal guardian.

C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the recipient's ISP which defines all of the shared responsibilities between the companion and the recipient. The written agreement shall include, but is not limited to:

- a. types of support provided by the companion;
- b. activities provided by the companion; and
- c. a typical weekly schedule.

2. Revisions to this agreement must be facilitated by the provider organization and approved by the ISP Team. Revisions may occur at the request of the recipient, the companion, the provider or other ISP Team members.

3. The provider organization is responsible for performing the following functions which are included in the daily rate:

- a. arranging the delivery of services and providing emergency services;
- b. making an initial home visit to the recipient's home, as well as periodic home visits as required by the department;

c. contacting the companion a minimum of once per week or as specified in the recipient's Individual Support Plan; and

d. providing 24-hour oversight and supervision of the companion care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the recipient which assures that:

a. the companion's portion of expenses must be at least \$200 per month, but shall not exceed 50 percent of the combined monthly costs which includes rent, utilities and primary telephone expenses; and

b. inclusion of any other expenses must be negotiated between the recipient and the companion. These negotiations must be facilitated by the provider and the resulting agreement must be included in the written agreement and in the recipient's ISP.

D. Companion Responsibilities

1. The companion is responsible for:

- a. participating in, and abiding by, the ISP;
- b. maintaining records in accordance with State and provider requirements; and
- c. purchasing his own food and personal care items.

E. Service Limits

1. Companion care services may be authorized for up to 360 hours per year as documented in the recipient's ISP.

F. Service Exclusions

1. Separate payment will not be made for community living supports since these services are integral to, and inherent in, the provision of companion care services.

2. Separate payment will not be made for the following residential service models if the recipient is receiving companion care services:

- a. respite care service-out of home;
- b. shared living;
- c. shared living-conversion; or
- d. host home.

G. Provider Qualifications. The provider agency must be licensed as a Personal Care Attendant 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, Office for Citizens with Developmental Disabilities, LR 33:

**§16307. Day Habilitation Services**

A. Day habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an individual's home. These activities shall promote independence, autonomy and assist the recipient with developing a full life in his community. The primary focus of day habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the individualized skills and include the intended outcome for the individual.

2. Individualized progress for the skill acquisition and maintenance activities should be routinely reviewed and evaluated, with revisions made as necessary to promote continued skill acquisition.

3. As an individual develops new skills, his training should move along a continuum of habilitation services offered toward greater independence and self-reliance.

B. Day habilitation services shall:

1. focus on enabling individuals to attain their maximum skills;

2. be coordinated with any physical, occupational or speech therapies listed in the recipient's ISP;

3. serve to reinforce skills or lessons taught in school, therapy or other settings; and

4. be furnished on a regularly scheduled basis for one or more days per week;

a. services may be furnished either half-day (over 2 and up to 4 hours per day) or full-day (over 4 hours per day) based on time spent on-site by the recipient.

C. Service Exclusions

1. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

2. Time spent in traveling to and from the habilitation program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

3. Billing may be made for only one habilitative or vocational service per day.

4. Day Habilitation services cannot be billed for the same time as any of the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan; or

c. respite care services—out-of-home.

D. Provider Qualifications. Providers must be licensed as an Adult Day Care Agency or certified by the Louisiana Rehabilitation Services as a Community 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, Office for Citizens with Developmental Disabilities, LR 33:

**§16309. Dental Services**

A. Dental services available through the ROW include:

1. comprehensive oral examinations;

2. x-ray films;

3. cleanings;

4. scalings;

5. root canals;

6. crowns;

7. surgical and non-surgical extractions;

8. sedations and anesthesia;

9. topical fluoride treatments; and

10. full or partial dentures.

C. Service Exclusion. Recipients must first access dental services covered under the Medicaid State Plan before utilizing dental services through the Residential Options Waiver.

D. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the

specific dental services in all specialty areas provided to the 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, Office for Citizens with Developmental Disabilities, LR 33:

**§16311. Environmental Accessibility Adaptations**

A. Environmental Accessibility Adaptations are physical adaptations to the recipient's home or vehicle which are necessary to ensure his health, welfare and safety, or which enable him to function with greater independence in the home.

1. All adaptations to the home and vehicle must meet all applicable standards of manufacture, design and installation.

B. Home accessibility adaptations may include the performance of assessments to determine the types of modifications that are needed and may include the following services to accommodate the medical equipment and supplies which are necessary to assure the welfare of the recipient:

a. installation of ramps and grab-bars;

b. widening of doorways;

c. modification of bathroom facilities; or

d. installation of specialized electric and plumbing systems.

1. Home accessibility adaptations may be applied to rental or leased property only with the written approval of the landlord and approval by OCDD.

2. When state and local building or housing code standards are applicable, modifications to the home shall meet such standards.

C. Environmental adaptation services to the home and vehicle include the following:

1. training the recipient and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;

2. repair of all equipment and/or devices, including battery purchases and other reoccurring replacement items that contribute to the ongoing maintenance of the adaptation(s); and

3. service contracts and other warranties.

D. Service Exclusions for Home Adaptations

1. Home modification funds are not intended to cover basic construction cost. Waiver funds may only be used to pay the cost of purchasing specific approved adaptations for the home, not for the construction costs of additions to the home.

2. Home modifications shall not be furnished to adapt living arrangements that are owned or leased by providers of waiver services.

3. Home modifications shall not include those modifications which add to the total square footage of the home, except when the additional square footage is necessary to make the required adaptation work.

4. Home modifications shall not include those modifications which are of general utility and are not of direct medical or remedial benefit to the individual, including, but not limited to:

a. flooring;

b. roof repair;

c. central air conditioning;

- d. hot tubs;
- e. swimming pools;
- f. exterior fencing; or
- g. general home repair and maintenance.

E. Vehicle adaptations are modifications to an automobile or van that is the waiver recipient's primary means of transportation in order to accommodate his special needs. These adaptations must be specified in the ISP as necessary to enable the recipient to integrate more fully into the community and to ensure his health, welfare and safety.

1. The scope of vehicle modifications may include the performance of necessary assessments to determine the types of modifications that are necessary and may include the installation of a lift or other adaptations to make the vehicle accessible to the recipient or for the recipient to drive.

2. Maintenance and/or repair of vehicle adaptations are included for coverage under ROW.

F. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to adapt vehicles that are owned or leased by paid caregivers or providers of waiver services, or to purchase or lease a vehicle.

2. Vehicle modifications which are of general utility and are not of direct medical or remedial benefit to the recipient are not covered in the ROW.

3. Regularly scheduled upkeep and maintenance of a vehicle is not covered.

4. Car seats are not considered a vehicle adaptation.

G. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a Home Improvement Contractor.

a. In addition, these providers must meet the applicable state and/or local requirements governing their licensure or certification.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

a. Existing providers of environmental accessibility adaptations to vehicles must comply with the licensing and accreditation requirements within 12 months of the effective date of the final Rule.

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, Office for Citizens with Developmental Disabilities, LR 33:

**§16313. Host Home**

A. Host Home services assist recipients in meeting their basic adaptive living needs and offer direct support where required. Recipients are afforded a welcoming, safe and nurturing family atmosphere in a family home environment. Host Home services are available to waiver recipients of any age and take into account compatibility, including individual interests, age, needs for privacy, supervision and support

needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required.

1. Host Home services may be provided by an individual unrelated to the recipient or by a family member, but shall not be provided by a parent, spouse or legally responsible relative or legal guardian.

B. Host home services:

1. include assistance with the activities of daily living specified in the recipient's ISP;

2. assist recipients to develop their leisure interests and activities in the home setting and their relationships with other members in the household; and

3. provide other supports consistent with the recipient's goals, person-centered plans and identified support needs.

C. Host home services are managed by provider organizations that are subject to licensure by the State. The provider organization is responsible for the following functions which are included in the reimbursement rate:

1. arranging for a host home and overseeing the delivery of services by the contractor and providing emergency services;

2. making an initial inspection of the host home, as well as periodic inspections, as required by licensing regulations; and

3. providing 24-hour oversight and supervision of host home services including back-up for the host home contractor for the scheduled and nonscheduled absences of the contractor;

a. The recipient, or his legally authorized representative if he is a minor, may agree for the recipient to temporarily move in with another host home family. In this instance, the host home provider is still responsible for oversight, supervision and back-up of the host home service.

D. Host home contractors are responsible for:

1. assisting with the development of the recipient's ISP and must abide by the provisions of the plan;

2. maintaining and providing data to assist in the evaluation of the recipient's personal goals;

3. maintaining adequate records to substantiate service delivery and producing such records upon the department's request;

4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the host home setting;

5. immediately reporting to their agencies any major issues or concerns related to the recipient's safety and well-being;

6. assisting the recipient to access community services, activities and in pursuing and developing recreational and social interests outside the home;

7. facilitating the recipient in becoming a part of his community and assisting with the teaching of community living skills as outlined in the ISP to achieve the recipient's goals concerning his community and social life, as well as to maintain contacts with his biological family and natural supports as specified in the person-centered plans;

8. furnishing assistance to the recipient, who is either working or interested in working, and to the provider agency

and other service entities in order to support the recipient's vocational objectives;

9. assisting recipients in keeping medical and therapy appointments, as well as attending these appointments when their support is beneficial; and

10. providing or arranging for transportation to school, work and medical/therapy appointments.

D. Host home contractors who serve children are required to provide daily supports and supervision on a 24-hour basis to meet on-going support needs and to handle emergencies as any family would do for their minor child as required and based on age, capabilities, health conditions and any special needs.

E. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult recipient's ISP based on medical, health and behavioral needs, age, capabilities and any special needs.

1. Host Home contractors that serve adults who have been interdicted must ensure that services are furnished in accordance with the legal requirements of the interdiction.

F. Host home contractors who are engaged in employment outside the home must adjust these duties to allow the flexibility needed to meet their responsibilities to the recipient.

G. Host Home Capacity. Regardless of the funding source, a host home contractor may not provide services for more than two recipients in the home.

#### H. Service Exclusions

1. Separate payment will not be made for community living supports since these services are integral to, and inherent in, the provision of host home services.

2. Separate payment will not be made for the following residential service models if the recipient is receiving host home services:

- a. respite care services—out-of-home;
- b. shared living;
- c. shared living-conversion; or
- d. companion care.

3. The host home contractor may not be the same individual as the owner or administrator of the designated provider agency.

I. Provider Qualifications. Providers must be licensed as a Class A Child Placing Agency to serve children or be approved by OCDD to serve adults in the host home setting.

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, Office for Citizens with Developmental Disabilities, LR 33:

### **§16315. Intensive Community Supports**

A. Intensive community supports (ICS) are specialized behavioral and psychiatric supports for people in the community who are at imminent risk of institutionalization. ICS include a collaborative, inter-disciplinary approach to develop individualized behavioral and psychiatric strategies that are both person-centered and effective.

1. Intensive community supports are provided through a specialized professional treatment team consisting of a/an:

- a. psychologist;
- b. psychiatrist;

- c. registered nurse;
- d. social worker; and as needed,
- e. an associate or assistant to a psychologist.

2. Each member is involved collaboratively in the development of an inter-disciplinary plan. The most clinically appropriate team member(s) represents the team in providing direct service to the recipient.

3. Critically appropriate team members must spend a minimum of one hour weekly meeting with the recipient and/or care givers at the onset of treatment.

4. Core team members include the:

- a. psychologist;
- b. social worker; and
- c. registered nurse.

NOTE: Psychologists must provide clinical leadership and provide supports consistent with person-centered practices and Louisiana's Guideline for Behavioral Supports.

5. Core team members must review summary data at least weekly. Written behavioral support strategies must be reviewed and updated at least monthly, based on the recipient's response to services.

6. The team also works closely with support coordinators to assure a coordinated team effort when other professionals in the community are providing supports (e.g., a neurologist, primary care physician, or physical therapist).

B. Supports and services available through the ICS include:

1. psychological evaluations;
2. psychosocial assessments;
3. psychiatric evaluations;
4. medical screenings;
5. intensive formalized positive behavioral supports;
6. psychiatric treatments;
7. family and/or agency training;
8. service transition planning;
9. brief counseling therapies;
10. 24-hour on-call telephone supports; and
11. crisis planning.

C. Recipient Qualifications. Documentation is required to demonstrate that all of the following criteria for intensive community supports services have been met. This documentation should especially demonstrate that existing services have not been able to remediate the participant's behavior and that more intensive interventions are necessary. To qualify for ICS, an individual must:

1. have an ongoing pattern of behavior that includes:
  - a. physical harm to self or others;
  - b. behaviors/psychiatric symptoms which have led to institutionalization in the past; or
  - c. psychiatric symptoms with a high probability of institutionalization including, but not limited to:
    - i. self-injurious behavior;
    - ii. physical aggression;
    - iii. illegal or inappropriate sexual acts;
    - iv. reckless endangerment;
    - v. psychiatric conditions leading to the denial of self-preservation; or
    - vi. extremely poor hygiene.
2. be at imminent risk of institutionalization;
3. have a need for 24-hour on-call telephone supports and crisis planning to support health and safety; and

4. have a rating of four or greater in behavioral supports on the Louisiana PLUS.

D. Service Exclusions

1. Intensive community supports do not include onsite crisis intervention services and cannot adequately serve people who:

- a. threaten or attempt suicide or homicide; or
- b. have a pattern of felony violations involving violence or the victimization of others.

2. When the ICS team is officially invoked for intensive or specialized situations, service authorization will not be approved and reimbursement will not be paid for other behavioral consultants/professional service providers who are not members of the ICS Team. The team may bill a team rate under the ICS definition provided their new service plan has been written and their assessment conducted.

3. Individual ICS Team members can subsequently bill an individual rate under the Professional Services definition for their follow-up services related to the ICS Team's assessment and service plan, provided this service is clearly linked to their ICS Team responsibilities.

4. Individual ICS Team members may also bill an individual rate under the Professional Services definition for services not linked to their ICS Team responsibilities, provided these services are clearly differentiated as regular, non-ICS professional services.

E. Provider Qualifications

1. Providers of ICS must have a current, valid license as a Family Support Agency serving individuals with developmental disabilities.

F. Staffing Qualifications

1. ICS Team members must possess a current, valid license issued by the appropriate governing board of Louisiana for that profession. The specific service delivered must be consistent with the scope of the license held by the professional.

a. Each ICS Team member must have a minimum of two years experience providing professional services to people with developmental disabilities or receive supervision by professional staff that has the requisite experience.

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, Office for Citizens with Developmental Disabilities, LR 33:

**§16317. Nursing Services**

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the state's Nurse Practice Act. The services require an individual nursing service plan and must be included in the Individual Support Plan.

1. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program under the Medicaid State Plan.

2. A physician's letter of medical necessity, 90-L and 485, an individual nursing service plan, a summary of medical history and the nursing checklist are required for nursing services.

3. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

B. Nursing consulting services include assessments and health related training and education for recipients and caregivers.

1. Assessment services are offered on an individual basis only and must be performed by a registered nurse.

2. Consulting services may also address healthcare needs related to prevention and primary care activities.

3. The health related training and education service is the only nursing service which can be provided to more than one recipient simultaneously. In this instance, each recipient is billed for his or her portion of the total service time.

C. Service Requirement. Recipients must first exhaust all available nursing visits provided under the Medicaid State Plan prior to receiving services through the waiver program.

D. Provider Qualifications

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or be an enrolled Shared Living Services agency with a current, valid license as a Supported Independent Living Agency.

E. Staffing Requirements

1. Nursing services shall be provided by individuals with either a current, valid license as a registered nurse from the Louisiana State Board of Nursing or a current, valid license as a practical nurse from the Board of Practical Nurse Examiners.

2. The RN or the LPN must possess two years of service delivery experience to persons with developmental disabilities post licensure.

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, Office for Citizens with Developmental Disabilities, LR 33:

**§16319. One Time Transitional Services**

A. One Time Transitional Services are one-time, set-up services to assist individuals in making the transition from an ICF/MR to their own home or apartment in the community of their choice.

1. Allowable transitional expenses may include:

- a. nonrefundable security deposits that do not include rental payments;
- b. set up fees for utilities;
- c. essential furnishings to establish basic living arrangements, including:
  - i. bedroom and living room furniture;
  - ii. table and chairs;
  - iii. window blinds
  - iv. food preparation items and eating utensils; and
  - v. a telephone; and
  - vi. moving expenses to occupy a community domicile;
- d. health and safety assurances including:
  - i. pest eradication;
  - ii. allergen control; or
  - iii. one-time cleaning prior to occupancy.

B. The recipient's support coordinator will arrange for transitional services for the individual.

C. Service Limits

1. Set-up transitional expenses are capped at \$3,000 per person over a recipient's lifetime.

D. Service Exclusions

1. Payment shall not be made for housing, rent or refundable security deposits.

2. One time transitional services are not available to waiver recipients who are receiving host home services.

3. One time transitional services are not available to waiver recipients who are moving into a family member's home.

E. The Office for Citizens with Developmental Disabilities shall be the entity responsible for coordinating the delivery of one time transitional services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

**§16321. Personal Emergency Response System (PERS)**

A. Personal Emergency Response System (PERS) is an electronic device which enables individuals to secure help in an emergency. The individual may also wear a portable help button to allow for mobility. The system is connected to the person's telephone and programmed to signal a response center once a help button is activated.

B. Recipient Qualifications. PERS services are available to individuals who:

1. have a demonstrated need for quick emergency back-up;

2. are unable to use other communication systems because they are inadequate to summon emergency assistance; or

3. do not have 24-hour direct supervision.

C. Coverage of the PERS includes the rental of the electronic device, the initial installation, training the recipient to use the equipment, and monthly maintenance fees.

D. Service Exclusions

1. Separate payment will not be made for Shared Living Services when PERS services are utilized since 24-hour direct supervision is available.

E. Provider Qualifications. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of personal emergency response systems including staffing requirements for the response center.

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, Office for Citizens with Developmental Disabilities, LR 33:

**§16323. Prevocational Services**

A. Prevocational Services are pre-vocational activities designed to assist individuals in acquiring and maintaining basic work-related skills for competitive employment. Because of their disabilities, these individuals need intensive ongoing support to perform in a paid work setting. Services should be offered to engage individuals in real and simulated employment tasks to determine their vocational potential. Overall goals of the program include regular community

inclusion and development of work skills and habits to improve the employability of the individual. These services must be reflective of the recipient's ISP and directed toward habilitation rather than teaching a specific job skill.

1. Prevocational Services should focus on teaching concepts and skills such as:

- a. following directions;
- b. attending to task;
- c. task completion;
- d. problem solving; and
- e. job safety skills.

2. The primary focus of prevocational services is the acquisition of employment related skills based on the individual's vocational preferences and goals.

a. These activities should include formal strategies for teaching the skills and the intended outcome for the individual.

b. Individualized progress for the activities should be routinely reviewed and evaluated with revisions made as necessary.

B. In the event recipients are compensated in the employment-related training services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If recipients are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

a. conduct six-month formal reviews to determine the suitability of this service rather than supported employment services;

b. make recommendations to transition the individual to a more appropriate vocational opportunity; and

c. provide the support coordinator with documentation of both the productivity time studies and documented reviews of current placement feasibility.

C. Service Limits

1. Services shall be furnished on a regularly scheduled basis for no more than eight hours a day, five days a week.

a. services may be furnished either half-day (over two and up to four hours per day) or full-day (over four hours per day) based on time spent on-site by the recipient.

D. Service Exclusions

1. Prevocational Services are not available to individuals who are eligible to participate in programs funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

2. Claims may be submitted for only one vocational or habilitative service per day.

3. Prevocational Services cannot be provided or billed for the same time as the following services:

- a. community living supports;
- b. professional services except direct contacts needed to develop a behavioral management plan; or
- e. respite care services—out-of-home.

4. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

E. Provider Qualifications. Providers must have a current, valid license as an Adult Day Care Center or have a Compliance Certificate from Louisiana Rehabilitation Services as a Community Rehabilitation 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, Office for Citizens with Developmental Disabilities, LR 33:

### §16325. Professional Services

A. Professional Services are direct services to recipients, based on need, that are designed to increase the individual's independence, participation and productivity in the home, work and community. Professional services must be delivered with the recipient present and be provided based on the approved ISP and an individualized service plan. Service intensity, frequency and duration will be determined by individual need. Professional services may be utilized to:

1. provide training or therapy to an individual and/or their natural and formal supports, necessary to either develop critical skills that may be self-managed by the individual or maintained according to the individual's needs;

2. perform assessments and/or re-assessments and provide recommendations;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

4. provide consultative services and recommendations;

5. provide necessary information to the individual, family, caregivers, and/or team to assist in planning and implementing plans per the approved ISP;

6. provide caregiver training that includes instructions in skills and knowledge pertaining to the support and assistance of persons with developmental disabilities and is intended to allow caregivers to become more proficient in meeting the needs of eligible individuals;

a. all caregiver training must be included in the recipient's ISP;

7. provide caregiver counseling for the natural, adoptive, foster, or host family members of individuals with disabilities, to develop and maintain healthy, stable relationships among all caregivers, including family members, to meet the needs of the recipient; and

a. emphasis is placed on the acquisition of coping skills by building upon family strengths. Services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver;

8. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider;

a. services are intended to maximize the individual's nutritional health.

B. Professional services covered in the ROW include:

1. occupational therapy;

2. physical therapy;

3. speech therapy;

4. dietary and nutritional services;

5. social work services; and

6. psychological services.

C. Service Exclusions

1. Professional services related to behavioral health services will not be authorized once the Intensive Community Supports team is officially invoked for intensive or specialized situations.

a. Individual ICS Team members may subsequently submit a claim under the Professional Services for their follow-up services related to the ICS Team's assessment and service plan provided this service is clearly linked to their ICS Team responsibilities.

b. Individual ICS Team members may also submit a claim under the Professional Services for services that are not linked to their ICS Team responsibilities provided these services are clearly differentiated as regular, non-ICS professional services.

2. Professional services may only be furnished and reimbursed through ROW when the services are not covered under the Medicaid State Plan as medically necessary, but are of habilitative or remedial benefit to the recipient.

3. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

b. Recipients who are over the age of 21 must exhaust the professional services available under the Medicaid State Plan before accessing these services through ROW.

D. Provider Qualifications

1. Individual practitioners who enroll as providers of Professional Services must have a current, valid license from the appropriate governing board of Louisiana for that profession.

a. In addition, the professional must possess two years of service delivery experience with persons with developmental disabilities or receive supervision by professional staff that has the requisite experience.

2. Provider agencies must have Medicare certification as a free-standing rehabilitation center or a current, valid license as a:

a. home health agency,

b. personal care attendant agency,

c. supported independent living agency, or

d. family support agency serving people with developmental disabilities.

E. Staffing Requirements. Individuals furnishing professional services may either be employed by or have a contract with the enrolled provider agency.

1. Professional services must be provided by individuals with a current, valid license from the appropriate governing board of Louisiana for that profession. The specific service delivered must be consistent with the scope of the license held by the professional.

2. Each professional must also possess two years of service delivery experience with persons with developmental disabilities or receive supervision by professional staff that has the requisite experience.

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, Office for Citizens with Developmental Disabilities, LR 33:

### **§16327. Respite Care Services—Out of Home**

A. Respite care services—out-of-home are supports and services provided for the relief of those unpaid caregivers who normally provide care to recipients who are unable to care for themselves. These services are furnished on a short-term basis in a respite center by a licensed respite provider. Respite care services are necessary to prevent individuals from being institutionalized.

1. A licensed respite care facility shall insure that community activities are available to the recipient in accordance with his approved ISP, including transportation to and from these activities.

a. The rate for respite care services—out-of-home includes the transportation costs for the community activities.

2. While receiving respite care services, the recipient's routine is maintained in order to attend school, school activities, work or other community activities he would receive if he was not in the center-based respite facility.

#### **B. Service Limits**

1. Respite Care Services are limited to 720 hours per recipient, per individual support plan year. Requests for an extension of the service limit are subject to the department's established approval process and require proper justification and documentation.

#### **C. Service Exclusions**

1. Room and board shall be covered only if it is provided as part of respite care furnished in a state-approved facility that is not a private residence.

2. Respite care services—out-of-home may not be billed for recipients receiving the following services:

- a. shared living;
- b. shared living conversion;
- c. companion care; or
- d. host home.

D. Provider Qualifications. The provider must possess a current, valid license as a respite care center.

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, Office for Citizens with Developmental Disabilities, LR 33:

### **§16329. Shared Living Services**

A. Shared living services assist the recipient in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the recipient and developed in accordance with his goals and wishes for his particular shared living setting with regard to compatibility, interests, age and privacy.

1. A shared living services provider delivers supports which include 24-hour staff presence and responsibilities as required in each recipient's ISP.

2. The provider is responsible for the daily schedule to provide the support, supervision, safety and security pertinent to the individual as he engages in a variety of community work and recreational/leisure activities and associations.

3. This service includes assistance with all of the activities of daily living.

B. Shared Living Conversion Option. The shared living conversion option is allowed only in homes which were previously licensed and certified as an ICF/MR for up to a maximum of eight licensed and Medicaid-funded beds on June 30, 2007.

1. The number of individuals residing in this service model shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/MR on June 30, 2007 or up to 6 individuals, whichever is less.

#### **C. Shared Living Option**

1. A shared living option is allowed for new or existing providers for up to a maximum of three individuals in a shared home setting. These shared home settings must be either a home owned or leased by the waiver recipients, or a home owned or leased and operated by a licensed shared living provider.

2. A shared living option for up to a maximum of 4 individuals in a shared home setting is limited to existing licensed and certified public or private ICFs/MR which elect to downsize into this model.

#### **D. Service Exclusions**

1. Payments are not made for room and board, the cost of home maintenance, upkeep or improvements.

2. Separate payment will not be made for transportation for the purpose of community access as this is a component of Shared Living services.

3. The following services are not available to recipients utilizing share living and shared living conversion services:

- a. community living supports;
- b. respite care services;
- c. companion care; or
- d. host home.

E. Provider Qualifications. Providers must be enrolled as a shared living agency and have a current, valid license as a Supported Independent Living 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, Office for Citizens with Developmental Disabilities, LR 33:

### **§16331. Specialized Medical Equipment and Supplies**

A. Specialized medical equipment and supplies includes durable and non-durable equipment that is necessary to address the functional limitations of the recipient as well as items necessary to support life or to address physical conditions, along with the ancillary supplies and equipment needed for proper functioning of such items. Specialized medical equipment and supplies may only be furnished and reimbursed through ROW when the services are not covered under the Medicaid State Plan as medically necessary, but are of rehabilitative or remedial benefit to the recipient.

1. Coverage includes for the purchase and/or rental of equipment, devices, controls, appliances and supplies specified in the ISP which increases the recipient's ability to:

- a. perform activities of daily living;
- b. perceive, control or communicate with his environment; or
- c. maintain health and safety.

B. Items provided through this waiver are in addition to any medical equipment and supplies covered under the Medicaid State Plan. All items must meet applicable standards of manufacture, design and installation.

C. Services include the following:

1. training the recipient and caregivers in the use and maintenance of equipment, devices, controls, appliances, supplies and related items;

2. repair and upkeep of all equipment, including battery purchases and other reoccurring replacement items that contribute to ongoing maintenance of the equipment; and

3. service contracts and other warranties.

D. Equipment includes the following items that are not covered under the Medicaid State Plan, Medicare and/or other funding sources:

1. specialized mobility devices (excluding wheelchairs);

2. specialized positioning devices or equipment;

3. therapeutic shoe inserts;

4. specialized medical equipment such as electronic lifts;

5. adaptive devices and equipment prescribed by a therapist for exercise;

7. alternative and augmentative communication boards, electronic communication devices and interfaces to operate prescribed devices.

E. Service Exclusions

1. Any equipment, device, appliance or supply that is covered under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage in the ROW.

2. Specialized equipment and supplies that are of general utility or maintenance and are not of direct medical or remedial benefit to the individual are excluded from coverage in the ROW.

F. Provider Requirements. In order to enroll to participate in the Medicaid Program, vendors of specialized medical equipment and supplies must furnish written documentation of authorization to sell, install and/or repair specialized equipment and supplies from the respective manufacturer of the designated equipment and supplies.

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, Office for Citizens with Developmental Disabilities, LR 33:

**§16333. Support Coordination**

A. Support coordination services are provided to all ROW recipients to assist them in gaining access to all of their needed services regardless of the funding source for the services. Support coordination will provide information and assistance to waiver recipients in directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the recipient's approved ISP.

2. Support coordinators shall also participate in the Evaluation and Re-evaluation of the recipient's ISP.

B. Support coordinators are responsible for providing assistance to recipients who choose the self-direction option with their review of the Self-direction Employer Handbook and for being available to these recipients for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a support coordination 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, Office for Citizens with Developmental Disabilities, LR 33:

**§16335. Supported Employment**

A. Supported Employment is competitive work in an integrated work setting, or employment in an integrated work setting, in which the individuals are working toward competitive work.

1. The support services provided are consistent with the individual's:

a. strengths;

b. resources;

c. priorities;

d. concerns;

e. abilities;

f. capabilities;

g. interests; and

h. informed choices.

2. Ongoing support services are provided to individuals for whom competitive employment has not traditionally occurred.

3. Services are provided to individuals who are not served by Louisiana Rehabilitation Services and need more intense, long-term follow along, and usually cannot be competitively employed because supports cannot be successfully faded.

B. Supported employment services include:

1. individual placement which is a supported employment placement strategy in which an employment specialist (job coach) places a person into competitive employment, provides training and support and then gradually reduces time and assistance at the worksite;

2. services that assist a recipient to develop and operate a micro-enterprise;

a. This service consists of:

i. assisting the recipient to identify potential business opportunities;

ii. assistance in the development of a business plan, including potential sources of business financing and other assistance in developing and launching a business;

iii. identification of the supports that are necessary in order for the recipient to operate the business; and

iv. ongoing assistance, counseling and guidance once the business has been launched.

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The disabled workers may be disbursed throughout the company and among non-disabled workers or congregated as a group in one part of the business; and

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor).

C. Service Limits

1. The required minimum number of service hours per day for supported employment is as follows for:

- a. individual placement services, the minimum is 1 hour;
- b. services that assist a recipient to develop and operate a micro-enterprise, the minimum is 1 hour;
- c. an enclave, the minimum is five hours; and
- d. a mobile work crew, the minimum is five hours.

**D. Service Exclusions**

1. Payment will only be made for the adaptations, supervision and training required by individuals receiving waiver services, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

2. Billing may be made for only one vocation or habilitative service per day.

3. Supported Employment Services cannot be billed for the same time as any of the following services:

- a. community living supports;
- b. professional services except direct contacts needed to develop a behavioral management plan; or
- c. respite care services—out-of-home.

4. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

5. The following incentive payments, subsidies or unrelated vocational training expenses are excluded from coverage in supported employment services:

- a. incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
- b. payments that are passed through to users of supported employment programs; or
- c. payments for vocational training that is not directly related to an individual's supported employment program.

6. Services are not available to individuals who are eligible to participate in programs funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

**E. Provider Qualifications.** Providers must have a Compliance Certificate from Louisiana Rehabilitation Services as a Community Rehabilitation 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, Office for Citizens with Developmental Disabilities, LR 33:

**§16337. Transportation Services**

**A.** Transportation services enable waiver recipients to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, and community inclusion as outlined in the recipient's ISP. Transportation

services under the waiver shall be offered in accordance with the recipient's ISP and must be documented in the ISP.

1. The recipient must be present to receive this service.

2. Whenever possible, the recipient must utilize the following resources for transportation:

a. family, neighbors, friends or community agencies which can provide this service without charge; or

b. public transportation or the most cost-effective method of transport available.

**B.** Transportation for community access and for habilitative and vocational services represents two separate and distinct services.

1. Transportation-Community Access is intended to assist the recipient to access community activities, resources and services to increase integration with persons who do not have developmental disabilities.

2. Transportation-Habilitative and Vocational is intended to assist the recipient to access Day Habilitation, Pre-Vocational and Supported Employment services.

a. These services are meant to provide maximum flexibility to the recipient to choose the mode of transportation that he wishes to use to reach a habilitative or vocational site. Therefore, transportation for this purpose is available and billable only if the individual receives a vocational or habilitative service on the day that this service is provided.

**C. Service Limits**

1. All community access trips shall be identified in the recipient's ISP. These trips are limited to three per day and must be arranged for geographic efficiency. Greater than three trips per day require approval from the Department of Health and Hospitals or its designee.

2. This service is limited to a maximum of two one-way trips per service day for a maximum of 264 days, 528 service units per year.

**D. Service Exclusions**

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

- a. shared living services; or
- b. respite care services—out-of-home.

**E. Provider Qualifications.** In order to participate in the Medicaid Program, transportation providers must comply with the following requirements. Providers of other waiver services (day habilitation, supported employment, shared living, etc.) may also separately enroll as transportation providers and must comply with the same requirements.

1. Transportation providers must comply with all state laws and local ordinances governing vehicle licensing, registration, inspection and operation.

2. For profit providers shall have a minimum liability insurance coverage of \$100,000 per person and \$300,000 per accident or a \$300,000 combined service limits policy.

a. The liability policy shall cover all automobiles owned or leased by the provider utilized for furnishing transportation services.

b. Premiums shall be prepaid for a period of six months. Verification of prepaid insurance must be a true and

correct copy of the policy issued by home office of the insurance company. The verification must include the dates of coverage and a 30 day cancellation notification clause.

i. Statements from the agent writing the policy will not be acceptable.

c. Verification of renewal of the insurance policy must be submitted to the Bureau of Health Services Financing (BHSF) no later than 48 hours prior to the end date of coverage.

i. The policy must provide that the 30 day cancellation notification be issued to BHSF. Upon receipt of the cancellation or expiration of coverage notice, the provider agreement for participation will be immediately cancelled. The ending date of participation shall be the ending date of insurance coverage.

ii. Retroactive coverage statements will not be accepted.

d. Providers who lose the right to participate in the Medicaid Program due to lack of prepaid insurance may re-enroll and will be subject to all applicable enrollment procedures, policies, and fees for new providers.

3. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain the state minimum automobile liability insurance coverage, a current state inspection sticker, and a current valid driver's license.

i. No special inspection by the Medicaid agency will be conducted.

ii. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the sworn and notarized statement of the individual enrolling for payment that all three requirements are met.

iii. Family and friends transportation providers are limited to transporting up to three specific waiver recipients.

H. Staffing Requirements. All drivers employed by for profit and non-profit transportation services providers must have a current, valid class D (chauffeur) license.

I. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all applicable state laws and regulations and are subject to inspection by the Department of Health and Hospitals or its designee.

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, Office for Citizens with Developmental Disabilities, LR 33:

## **Chapter 165. Self-Direction Initiative**

### **§16501. Self-Direction Service Option**

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver recipient to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver recipients choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own

care and individual budget. If the recipient is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the recipient or authorized representative include:

1. completion of mandatory trainings, including the rights and responsibilities of managing his own services and supports and individual budget;

2. participation in the self-direction service option without a lapse in, or decline in quality of care or an increased risk to health and welfare; and

a. recipients must adhere to the health and welfare safeguards identified by the team, including:

i. the application of a comprehensive monitoring strategy and risk assessment and management systems; and

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver recipients;

3. participation in the development and management of the approved personal purchasing plan.

a. This annual budget is determined by the recommended service hours listed in the recipient's ISP to meet his needs.

b. The recipient's individual budget includes a potential amount of dollars within which the recipient, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the ISP, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary termination. The waiver recipient may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a recipient and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the recipient is compromised by continued participation in the self-direction service option;

b. the recipient is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the recipient or the authorized representative; or

d. over three payment cycles in the period of a year, the recipient or authorized representative:

i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff;

ii. fails to follow the personal purchasing plan and the ISP;

iii. fails to provide required documentation of expenditures and related items; or

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

D. Employees of recipients in the self-direction service option are not employees of the fiscal agent or the Department of Health and Hospitals.

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, Office for Citizens with Developmental Disabilities, LR 33:

## **Chapter 167. Provider Participation**

### **§16701. General Provisions**

A. In order to participate in the Medicaid Program as a provider of services in the Residential Options Waiver, a provider must:

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department; and

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved ISP and provide said documentation upon the Department's request.

C. In order for a provider to bill for services, the waiver recipient and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the recipient is not present:

- a. environmental accessibility adaptations;
- b. personal emergency response systems; and
- c. one-time transitional services.

2. All services must be documented in service notes which describe the services rendered and progress towards the recipient's personal outcomes and his ISP.

D. If transportation is provided as part of a waiver service, the provider must comply with the requirements for transportation services providers set forth in §16337.G-I.

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, Office for Citizens with Developmental Disabilities, LR 33:

## **Chapter 169. Reimbursement**

### **§16901. Reimbursement Methodology**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver recipient. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. respite care;
2. community living supports (CLS);
  - a. up to three recipients may share CLS services if they share a common provider of this service;
  - b. there is a separate reimbursement rate for CLS when these services are shared;
3. professional services furnished by a/an:
  - a. psychologist;
  - b. speech therapist;
  - c. physical therapist;

d. occupational therapist;

e. social worker; or

f. dietician/nutritionist;

4. nursing services;

5. intensive community supports; and

6. supported employment.

B. The following services are reimbursed at the cost of adaptation device, equipment or supply item:

1. environmental accessibility adaptations;

a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the recipient a certificate of warranty for all labor and installation work and supply the recipient with all manufacturers' warranty certificates;

2. assistive technology; and

3. specialized medical equipment and supplies.

C. The following services are reimbursed at a per diem rate:

1. host home;

2. companion care living services;

3. shared living services;

a. Per diem rates are established based on the number of individuals sharing the living service module for both for shared living and shared living conversion services.

D. The following services are reimbursed at a per diem rate which may be billed either half-day (over two and up to four hours per day) or full-day (over four hours per day) based on time spent on-site by the recipient:

1. day habilitation; and

2. pre-vocational.

E. The reimbursement for transportation services is a flat fee based on a capitated rate.

F. Support coordination services shall be reimbursed at a fixed monthly rate in accordance with the terms of the established contract.

G. Installation of a personal emergency response system (PERS) is reimbursed at a one-time fixed rate and maintenance of the PERS is reimbursed at a monthly rate.

H. Transition expenses from an ICF/MR or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a one-time maximum rate.

I. Dental services are reimbursed at the Medicaid fee-for-service rate.

J. Reimbursement Exclusion. No payment will be made for room and board under this waiver 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, Office for Citizens with Developmental Disabilities, LR 33:

### **§16903. Direct Support Staff Wages**

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher.

1. community living supports;

2. respite services-out of home;

3. shared living conversion option;

4. shared living option;
5. day habilitation;
6. prevocational services; and
7. supported employment.

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, Office for Citizens with Developmental Disabilities, LR 33:

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 Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is the person responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, 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.

**Family Impact Statement**

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 the implementation of this proposed Rule will have a positive effect on family functioning, stability, or autonomy as described in R.S. 49:972 as it will promote the independence of people with developmental disabilities.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

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

**RULE TITLE: Home and Community-Based Services Waivers—Residential Options Waiver**

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

It is anticipated that the implementation of this proposed rule will result in an estimated cost to the state of \$1,176,054 for FY 07-08 and \$1,975,632 for FY 08-09. It is anticipated that \$5,372 (\$2,686 SGF and \$2,686 FED) will be expended in FY 06-07 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 \$2,991,394 for FY 07-08 and \$5,025,190 for FY 08-09. It is anticipated that \$2,686 will be expended in FY 06-07 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 implement a new home and community-based services waiver, called the Residential Options Waiver, to promote independence for individuals with developmental disabilities through a wide array of services,

supports and residential options (200 recipients). It is anticipated that implementation of this proposed rule will increase program expenditures by approximately \$4,167,448 for FY 07-08 and \$7,000,822 for FY 08-09."General Appropriation Bill reflects the funding for this waiver."

**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.

Jerry Phillips  
Medicaid Director  
0708#092

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Military Sales Practices (LAC XIII.Chapter 125)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance for the Louisiana Department of Insurance hereby gives notice of the department's intent to promulgate Regulation 92, which is in part predicated on Public Law 109-290, the "Military Personnel Financial Services Protection Act." The purpose of Regulation 92 is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain practices identified by the U.S. Congress and the National Association of Insurance Commissioners to be false, misleading, deceptive or unfair.

**Title 37**

**INSURANCE**

**Part XIII. Regulations**

**Chapter 125. Regulation 92—Military Sales Practices**

**§12501. Purpose**

A. The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

**§12503. Scope**

A. This regulation shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

**§12505. Authority**

A. This regulation is promulgated by the Commissioner of Insurance pursuant to authority granted under the

Louisiana Insurance Code, Title 22, §22:1 et seq., particularly 22:3, and the Unfair Trade Practices Law, see Title 22, §1211, and specifically §1214.(1)(a).

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

### §12507. Exemptions

A. This regulation shall not apply to solicitations or sales involving:

1. credit insurance;
2. group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
3. an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
4. individual stand-alone health policies, including disability income policies;
5. contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;
6. life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or
7. contracts used to fund:
  - a. an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - b. a plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;
  - c. a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
  - d. a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
  - e. settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
  - f. prearranged funeral contracts.

B. Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DOD Instruction 1344.07—Personal Commercial Solicitation on DOD Installations or successor directive.

C. For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and

unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this Subsection shall be construed to exempt an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

### §12509. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein, unless the context clearly indicates otherwise.

*Active Duty*—full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

*Department of Defense (DOD) Personnel*—all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

*Door to Door*—a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

*General Advertisement*—an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

*Insurer*—an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

*Insurance Producer*—a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

*Known or Knowingly*—depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

1. is a service member; or
2. is a service member with a pay grade of E-4 or below.

*Life Insurance*—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

*Military Installation*—any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

*MyPay*—a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

*Service Member*—any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

*Side Fund*—a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

- a. accumulated value or cash value or secondary guarantees provided by a universal life policy;
- b. cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- c. a premium deposit fund which:
  - i. contains only premiums paid in advance which accumulate at interest;
  - ii. imposes no penalty for withdrawal;
  - iii. does not permit funding beyond future required premiums;
  - iv. is not marketed or intended as an investment; and
  - v. does not carry a commission, either paid or calculated.

*Specific Appointment*—a prearranged appointment agreed upon by both parties and definite as to place and time.

*United States Armed Forces*—all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

**§12511. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation**

A. The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

1. knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;
2. soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary;
3. knowingly making appointments with or soliciting service members during their normally scheduled duty hours;
4. making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;
5. soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;
6. posting unauthorized bulletins, notices or advertisements;
7. failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members

solicited or encouraging service members solicited not to complete or submit a DD Form 2885;

8. knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DOD or any branch of the Armed Forces.

B. The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

1. using DOD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members;
2. using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

**§12513. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location**

A. The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

1. submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This Subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;
2. knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this Section, a formal banking relationship is established when the depository institution:
  - a. provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C., §4301 et seq. and the regulations promulgated thereunder; and
  - b. permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;
3. employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as

"Savings" or "Checking" and where the service member has no formal banking relationship as defined in §12513.A.2;

4. entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

5. using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

6. offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

7. knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited;

8. advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

B. The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair.

1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

2. Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

3. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

C. The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums,

costs or investment returns and are declared to be false, misleading, deceptive or unfair:

1. using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid;

2. excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

D. The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

1. making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

2. making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive;

3. suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

E. The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

1. deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

2. failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

3. excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

4. failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16;

5. excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

a. an explanation of any free look period with instructions on how to cancel if a policy is issued; and

b. either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of the department's Regulation 55, "Life Insurance Illustrations" shall be deemed sufficient to meet this requirement for a written disclosure.

F. The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

1. excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

2. offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance:

a. "insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents;

b. "other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits;

3. excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

a. unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

b. unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

c. which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

4. excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

### §12515. Severability

A. If any provision of these Sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these Sections which can be given effect without the invalid provisions or application. To this end all provisions of these Sections are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

### §12517. Effective Date

A. This regulation shall become effective upon final publication in the *Louisiana Register* and shall apply to acts or practices committed on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

### Family Impact Statement

1. Describe the effect of the proposed Rule on the stability of the family. Regulation 92 Rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed Rule on the authority and rights of parents regarding the education and supervision of their children. Regulation 92 Rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed Rule on the functioning of the family. Regulation 92 should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed Rule on family earnings and budget. Regulation 92 should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. Regulation 92 should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the ability of the family or a local government to perform the function as contained in the Rule. Regulation 92 should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

On Monday, September 24, 2007, beginning at 9 a.m., the Department of Insurance will hold a public hearing in the Plaza Hearing Room of the Poydras Building located at 1702 N. Third Street, Baton Rouge, LA, 70802. The purpose of the hearing is to allow for public commentary concerning the proposed promulgation of Regulation 92 as set forth below.

Persons interested in obtaining copies of Regulation 92 or in making comments relative to this proposal may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Written comments will be accepted through the close of business on Tuesday, September, 2007.

James J. Donelon  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Military Sales Practices**

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

DOI does not expect any implementation costs as a result of the adoption of this regulation. Any additional work will be absorbed by existing DOI staff. The regulation merely sets standards to protect active duty members of the United States Armed Forces from dishonest and predatory insurance sales practices.

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

There will be no increase or decrease in revenue as a result of Regulation 92.

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

The regulation will provide better protection from predatory and dishonest insurance sales practices for active members of the United States Armed Forces, but DOI has no way of estimating the economic value of that benefit.

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

Implementation of this regulation should have no impact upon competition and employment in the state.

Chad M. Brown  
Deputy Commissioner  
0708#074

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The proposed action will adopt Statewide Order No. 29-R-07/08 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-06/07.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations**

**Subpart 2. Statewide Order No. 29-R**

**Chapter 7. Fees**

**§701. Definitions**

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*Application for Noncommercial Injection Well*—an application to construct and/or operate a Class I, II, III, or V noncommercial injection well, as authorized by Statewide Order Nos. 29-B (LAC 43:XIX.401 et seq.), 29-M (LAC 43:XVII.301 et seq.), 29-N-1 (LAC 43:XVII.101 et seq.), 29-N-2 (LAC 43:XVII.201 et seq.), 29-M-2 (LAC 43:XVII.3101 et seq.), successor regulations.

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*BOE*—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 9.0.

*Capable Gas*—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2006.

*Capable Oil*—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2006.

\*\*\*

*Production Well*—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2006.

*Regulatory Fee*—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31, 2006, and located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:21 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:

**§703. Fee Schedule for Fiscal Year 2007-2008**

A. ...

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,964 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,482 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$708 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$708 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$10,389 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	16
Tier 2	1 - 5,000	87
Tier 3	5,001 - 15,000	251
Tier 4	15,001 - 30,000	413
Tier 5	30,001 - 60,000	657
Tier 6	60,001 - 110,000	907
Tier 7	110,001 - 9,999,999	1,115

E. - E.3. ...

F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$20.20 per mile, or a minimum of \$360, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$20.20 per mile, or a minimum of \$360, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:

**§707. Severability and Effective Date**

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-07/08 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-07/08) supersedes Statewide Order No. 29-R-06/07 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:

**Family Impact Statement**

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed Rules will have no effect on family earnings and family budget.

5. The proposed Rules will have no effect on the behavior and personal responsibility of children.

6. The proposed Rules will have no effect on the ability of the family or local government to perform any function as contained in the proposed Rules.

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Monday, October 1, 2007. Comments should be directed, in writing to Todd Keating, Director, Engineering Division, Office of Conservation, P.O. Box 94275, Capitol Station, Ninth Floor, Baton Rouge, LA 70804-9275 (Re: Docket No. 07-882 Proposed Statewide Order No. 29-R-07/08).

A public hearing will be held at 9 a.m., Wednesday, September 26, 2007, in the LaBelle Hearing Room, located on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh  
Commissioner of Conservation

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Fees (LAC 43:XIX.701, 703, and 707)**

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

There are no implementation costs (savings) to state or local governmental units resulting from this action.

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

Proposed Statewide Order No. 29-R-07/08 establishes the Louisiana Office of Conservation Fee Schedule for the collection of application, production, and regulatory fees by the Office of Conservation and will replace the existing Statewide Order No. 29-R-06/07 and will retain the maximum revenue caps authorized in R.S. 30:1 et seq. The Proposed Rule will retain the existing fee schedule for all Application Fees. R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706 provide that the Commissioner of Conservation shall periodically and/or annually review the fees collected, and the Office of Conservation has established a practice of annually evaluating all applicable fees. The Production Tier Fee in the FY 07/08 Fee Schedule has been increased an average 16% overall due to the decreased number of participating wells. The Regulatory Fees for Class I Injection Wells have been increased an average 5.19%; and, the Regulatory Fees for Class II and III Injection Wells, and Type A and B Commercial Facilities have increased by approximately 3.83% due to the declining numbers of wells

and facilities. The Office of Conservation will collect approximately \$7,243,482 in revenue for these fees in FY 07/08.

Additionally, the passage of Act Nos. 222 and 223 of the 2004 Regular Legislative Session, authorizes the Office of Conservation to determine by rule annually, in accordance with the Administrative Procedure Act, the pipeline safety inspection fees charged for the approximately 45,462 miles of state regulated jurisdictional gas distribution and gas transmission pipelines (R.S. 30:560) and approximately 4,840 miles of state jurisdictional hazardous liquids pipelines (R.S. 30:706). Although the Office of Conservation is authorized to collect a "fee not to exceed \$22.40 per mile, or a minimum of \$400, whichever is greater" for these state jurisdictional gas and hazardous liquids pipelines, it should be emphasized that the Agency is proposing a FY 07/08 fee of only \$20.20 per mile, or a minimum of \$360, whichever is greater, which is an increase of \$2.20 per mile, or \$40 for the minimum fee, from those fees charged in FY 06/07, but is still less than the maximum fees authorized by statute. This increase in fees will help to offset the Agency's pay increases and associated related benefits as appropriated by Act 18 of the 2007 Regular Session of the Louisiana Legislature. The Office of Conservation is projected to collect approximately \$1,016,100.40 for the pipeline safety inspection fees in FY 07/08, or \$99,229 more than collected in FY 06/07.

No local governmental units will be impacted by this action.

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

The proposed rule will replace the existing Office of Conservation Fee Schedule. The proposed Statewide Order No. 29-R-07/08 will retain the existing revenue caps for fees assessed to industries under the jurisdiction of the Office of Conservation, as authorized by R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706, and is expected to reach approximately \$8,259,582.40 for FY 07/08.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The passage of Statewide Order No. 29-R-07/08 will have no effect on competition and employment.

Gary P. Ross  
Assistant Commissioner  
0708#081

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of Management and Finance  
State Uniform Construction Code Council**

**Third Party Providers (LAC 55:VI.705)**

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council hereby proposes to amend Chapter 7, Subsections 705.B and 705.D to provide for higher insurance requirements for third party providers and to require that inspection reports be provided to the jurisdiction.

**Title 55  
PUBLIC SAFETY**

**Part VI. Uniform Construction Code**

**Chapter 7. Certificates of Registration**

**§705. Third Party Providers**

A. - A.1. ...

B. Insurance. All third party providers shall carry at least \$500,000 in professional liability insurance. Proof of valid and current insurance coverage must be provided to the Council upon registration and renewal of registration.

C. - D.2. ...

3. Third party providers providing inspection services for non-governmental entities shall provide written copies of the approved inspection reports to the code enforcement officer of the jurisdiction prior to the issuance of the certificate of occupancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 33:

**Family Impact Statement**

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Paeton Burkett, Attorney, at 7979 Independence Boulevard, Suite 307Q, Baton Rouge, LA 70806. Comments will be accepted through close of business September 10, 2007.

Jill P. Boudreaux  
Acting Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Third Party Providers**

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

This rule will not result in a significant increase in costs or savings to local governmental units since the rule only applies

to third party providers. According to current state law and Council Rules, Third Party Providers must carry a minimum amount of liability insurance and they must provide copies of their plan review to the local jurisdiction. The proposed rule merely increases the minimum insurance requirement and further requires Third Party Providers to provide copies of their inspection reports to the local jurisdiction. Furthermore, the proposed rule does not add any additional expenditures apart from or in addition to those that will result from the enactment of Act 12 of the 2005 First Extraordinary Session. Pursuant to that Act, the Department of Public Safety and Corrections has employed four (4) additional positions needed as staff for the Uniform Construction Code Council. The annual cost of these positions and associated expenses are estimated to be \$322,478 in FY 08, \$331,361 in FY 09, and \$340,601 in FY 10.

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

The proposed rule will have no effect on revenue collections of state governmental units.

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

Third Party Providers obtaining their Certificate of Registration from the Louisiana State Uniform Construction Code Council will be directly impacted in that they must carry a higher limit of professional liability insurance of at least \$500,000, which is an increase of \$400,000 of coverage. This increased minimum liability requirement will result in an estimated increase to insurance premium costs for a Third Party Provider of approximately \$500 annually. Also, Third Party Providers will now have to provide local jurisdictions with copies of their inspection paperwork. This will be a minor workload adjustment to the Third Party Provider since the Third Party Provider already has this specific paperwork prepared for their clients and for their own recordkeeping purposes.

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

There will be no effect on competition and employment as the proposed rule merely increases the minimum liability insurance requirement for all Third Party Providers and mandates that Third Party Providers provide the local jurisdiction with copies of the relevant inspection reports.

Jill P. Boudreaux  
Acting Undersecretary  
0708#045

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of State Police**

**User Fees for Louisiana State Police Facility (LAC 55:I.301)**

Under the authority of the State Police Law, R.S. 40:1375(F), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of State Police hereby proposes to amend Section 301 under Chapter 3 to amend the user fees at LSP Training facilities and to add a fee schedule for new facilities.

The proposed Rule increases the current fees as well as establishes new fees for pistol ranges, shoot houses, breaching houses, driving simulators, and conference center meeting rooms, dining rooms, and Lodge rooms. The basis and rationale for the proposed Rule is to offset increased cost

of administration and to include new LSP facilities not previously listed.

**Title 55  
PUBLIC SAFETY  
Part I. State Police**

**Chapter 3. Training and Education**

**§301. User Fees for Louisiana State Police Facility**

A. The Louisiana State Police announces maximum user fees for its training facilities pursuant to R.S. 40:1375(F) according to the following schedule.

<b>Louisiana State Police Training Facility Rates</b>	
Academy Dorm Room Single Occupancy	\$33 per day
VIP Dorm Room Single Occupancy	\$44 per day
Large Flat Classroom Seating for 50	\$220 per day
Large Tiered Classroom Seating for 50	\$220 per day
Small Flat Classroom Seating for 25-40	\$165 per day
Classroom AV Package	\$100 per day
Defensive Tactics Room Training for 75	\$330 per day
Gymnasium/Track Training for 250	\$550 per day
Training Tank Pool Training for 50	\$550 per day
Auditorium Seating for 250	\$550 per day
Computer Lab Seating for 25	\$500 per day
Conference Room w/TV Seating for 15	\$165 per day
Pistol Ranges Training for 25-50	\$550 per 8 hr day
Range Classrooms Training for 25-50	\$220 per 8 hr day
	\$30 per hour over 8
Single Level Shoothouse	\$550 per 8 hr day
	\$330 per 4 hr day
	\$55 per hour over 8
Bi-Level Shoothouse	\$660 per 8 hr day
	\$385 per 4 hr day
	\$82 per hour over 8
Rifle Range Training for 17	\$550 per day
Bomb Ranges	\$550 per day
Explosives Classrooms	\$220 per day
Explosives Breaching House #1 (Mechanical)	\$330 per day
Explosives Breaching House #2 (Advanced)	\$550 per day
Breach House Classroom	\$175 per day
Device Assembly Building	\$200 per day
Target Shoothouse Bi-level	\$385 per day
Shooting Simulator	\$220 per day
Post Blast Investigation Building #1	\$275 per day
Post Blast Investigation Building #2	\$275 per day
Post Blast Investigation Building #3	\$220 per day
Storage Building (1600sf)	\$200 per day
Storage Trailer (A/C)	\$64 per day
JESTC Grounds (Terrain only)	\$1,500 per day
Driving Track (Site only)	\$1,320 per day
Complete EVOC facility	\$10,000 per week
Driving Track (Site w/staff)	\$2,300 per day
	\$15,000 per week
	\$525 per person per 80 hr class
Driving Course (Instructors)	\$135 per person per 8 hr class
Driving Course (Defensive Driving)	\$245 per person per 16 hr class
	\$135 per person per 8 hr class
Driving Course (Teen/Civilian)	\$425 per person per 40 hr class
Driving Course (In-Service)	\$550 per day
Driving Skills Pad/Pan	\$100 per day
Police Training Vehicle	\$220 per day
Driving Simulator	\$220 per day
Driving Track Classroom(s)	\$70 per day
Driving Track Office	\$300 per week
Conference Center Projector	\$110 per day

Conference Center TV	\$50 per day
Conference Center TV w/ VCR	\$80 per day
Conference Center Lectern	\$30 per day
Conference Center Laptop Computer	\$110 per day
Conference Center AV Package	\$100 per day
Conference Center Offices	\$70 per day
	\$300 per week
Conference Center Meeting Room Seating for 60	\$550 per day
Conference Center Breakout Room Seating for 30	\$330 per day
Conference Center Breakout Room Seating for 15	\$220 per day
Seating for 15	\$350 per day
Conference Center Lounge	\$350 per day
Conference Center Dining Room	\$550 per day
Conference Center Patio	\$200 per day
Conference Center Lodge Rooms	
Lodges 3-6	\$50 single/\$80 double (GOVT)
	\$60 single/\$90 double (COMM)
VIP Lodge Rooms	\$80 single/\$110 double
Holden Classroom	\$220 per day
Holden Facility Grounds	\$3,300 per day
Holden Cabins	\$33 per day
Applied Technology Labs	\$110 per day
	\$3-825 per day depending on service
Video Production Services	
Walker Firearms Range	\$550 per day

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1375 (F)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 12:116 (February 1986), amended LR 26:95 (January 2000), LR 26:2626 (November 2000), LR 33:

### Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Allison Fitzgerald, Attorney, Louisiana State Police, at 7979 Independence Boulevard, Suite 307G, Baton Rouge, LA 70806. Comments will be accepted through close of business September 10, 2007.

Jill P. Boudreaux  
Acting Undersecretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: User Fees for Louisiana State Police Facility

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

The Louisiana State Police (LSP) proposes to set user fees for new training facilities and to increase previously published user fees for existing facilities. State agencies, local governments, and nongovernment users who utilize the facilities will be charged fees that are approximately 10 percent higher than those previously published. Total costs cannot be estimated at this time as the amount will be dependant on the amount of use. As the LSP Training Academy and the Joint Emergency Services Training Center are ancillary budget units, the collection of additional fees will not have a net positive or negative impact as all fees collected provide for said ancillary functions.

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

Implementation of these changes will result in increased collections of user fees. A specific amount cannot be provided as the amount of use by outside government and non-government users will determine the resulting total. As matters of reference, the LSP collected \$2,060,868.58 in user fees for FY 05-06 and \$2,891,889.08 for FY 06/07. If usage of the facilities remains at previous levels an estimated average additional \$247,638 in collected user fees could be expected, all self-generated, and all of which goes toward satisfying the ancillary budgets of the respective facilities.

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

An increase of approximately 10 percent in user fees can be expected with implementation of these changes.

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

The effect on competition and employment will be minimal. While local privately-owned conference centers are available, LSP anticipated more new users and existing users than users who would have otherwise sought a local privately-owned facility. Law enforcement training facilities are generally used by law enforcement agencies who would not be able to perform the training offered at privately-owned facilities.

Jill P. Boudreaux  
Acting Undersecretary  
0708#044

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Tax Preparers—Electronic Filing Requirement (LAC 61:III.1501)

Under the authority of R.S. 47:1511 and 47:1520 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1501 to provide for the requirement for tax preparers to file certain individual income tax returns electronically.

Act 452 of the 2006 Regular Session of the Legislature amended R.S. 47:1520(A) to authorize the secretary to require certain tax preparers to file returns electronically under certain circumstances and to require that the electronic filing requirements be implemented by administrative rule in accordance with the Administrative Procedure Act.

#### Title 61

#### REVENUE AND TAXATION

#### Part III. Administrative Provisions and Miscellaneous Chapter 15. Electronic Filing and Payments

#### §1501. Requirement for Tax Preparers to File Income Tax Returns Electronically

##### A. Definitions

*Authorized Individual Income Tax Return*—any individual tax return that can be filed electronically.

*Filed Electronically*—filing a tax return by electronic means using software that has been approved for electronic filing by the Louisiana Department of Revenue.

*Individual Income Tax Return*—any tax return required to be filed by R.S. 47:101.

*Tax Preparer*—a person or entity that prepares for compensation or employs one or more persons to prepare for compensation any Louisiana individual income tax return.

a. A tax preparer is an entity that is assigned a Tax Identification Number and includes all of the entity's locations.

b. The combined total of the returns prepared at all of the tax preparer's locations will be used to determine whether or not the tax preparer is subject to the electronic filing mandate.

B. Individual income tax returns prepared by a tax preparer that prepares more than 100 Louisiana individual income tax returns during any calendar year are required to be filed electronically as follows.

1. For returns due on or after January 1, 2008, 30 percent of the authorized individual income tax returns must be file electronically.

2. For returns due on or after January 1, 2010, 60 percent of the authorized individual income tax returns must be filed electronically.

3. For returns due on or after January 1, 2012, 90 percent of the authorized individual income tax returns must be filed electronically.

C. A tax preparer that is subject to the electronic filing mandate must be accepted in the IRS e-file Program and have an electronic filer identification number (EFIN) and use software that has been approved for e-file by the Louisiana Department of Revenue.

D. Once a tax preparer is subject to the electronic filing mandate, the tax preparer must continue to e-file the required percentage of authorized individual income tax returns in future years regardless of the number of returns filed.

E. The secretary may waive the electronic filing requirement if it is determined that complying with the requirement would cause an undue hardship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 33:

#### Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our Legislative oversight committees. Implementation of this proposed Rule will have no effect on:

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

Interested persons may submit data, views, or arguments, in writing to Leonore Heavey, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, September 25, 2007. A public hearing will be held on Wednesday, September 26, 2007, at 10 a.m. in the River Room Conference Room on the Seventh Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges  
Secretary

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

#### RULE TITLE: Tax Preparers Electronic Filing Requirement

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

This proposed rule will require individual income tax returns prepared by a tax preparer that prepares more than 100 Louisiana individual income tax returns during any calendar year to be filed electronically. The electronic filing systems and processes will allow the reallocation of some resources and staff time to other tax process

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

This proposed rule, which will require individual income tax returns prepared by a tax preparer that prepares more than 100 Louisiana individual income tax returns during any calendar year to be filed electronically, will have no impact on the revenue collections of state or local governmental units.

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

Tax preparers who prepare more than 100 Louisiana individual income tax returns during any calendar year will be required to file a percentage of their returns electronically. Electronic filing is usually less costly for tax preparers than paper filing and most preparers do not charge the tax payer for this service. The costs to tax preparers and taxpayers should be negligible.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not effect competition or employment.

Cynthia Bridges  
Secretary  
0708#071

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**TANF—Jobs for America's Graduates Louisiana  
(JAGS-LA) Program (LAC 67:III.5591)**

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III:5591 Jobs for America's Graduates Louisiana (JAGS-LA) Program as a new TANF Initiative.

Pursuant to House Bill 1 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the JAGS-LA Program to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically, and to assist students in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

This Rule was effected July 1, 2007, by a Declaration of Emergency published in the July 2007 issue of the *Louisiana Register*.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5591. Jobs for America's Graduates Louisiana (JAGS-LA) Program**

A. Effective July 1, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education for the Jobs for America's Graduates Louisiana (JAGS-LA) Program.

B. These services meet the TANF goal to prevent and reduce the incidence of out of wedlock births by providing intervention and improved life prospects for students who show evidence of failing, dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, imprisonment, etc.

C. Eligibility for services is not limited to needy families, however, eligible participants in the JAGS-LA Program shall be 15-21 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; House Bill 1, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The purpose of this program is to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically and to assist the student in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? An effect on the authority and rights of persons regarding the education and supervision of their children is not foreseen at this time.

3. What effect will this have on the functioning of the family? As a result of students participating in the JAGS-LA Program, a positive effect should occur due to earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

4. What effect will this have on family earnings and family budget? An effect on the family earnings and family budget could increase due to earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

5. What effect will this have on the behavior and personal responsibility of children? An effect on the behavior and personal responsibility of children is not foreseen at this time.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through September 27, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on Thursday, September 27, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ann Silverberg Williamson  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: TANF—Jobs for America's Graduates  
Louisiana (JAGS-LA) Program**

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

This rule will allow the Department of Social Services (DSS) to implement the Jobs for America Graduates (JAGS-LA) Program. The purpose of this Program is to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically and to assist the student in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

DSS will enter into Memorandum of Understanding with the Department of Education to provide services for the program. The program proposes to provide conferences, counseling, and advisory committees to the youth that will offer leadership and direction to further their education. Participants must be 15-21 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers. The implementation costs for the JAGS-LA Program are estimated to be \$500,000 for FY 07/08. The cost of publishing the rule is approximately \$160. The total cost for FY 07/08 is \$500,160. The total cost is 100 percent federally funded with monies from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant with the exception of \$80, which will be funded with State General Fund. The cost for FY 08/09 and 09/10 is \$500,000. Funding will have to be appropriated in these fiscal years to continue the program.

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

Implementation of this rule will have no effect on state or local revenue collections.

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

The JAGS-LA Program has a long-term goal of improving the economic situations of the targeted families via educational opportunities available through the program.

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

The proposed rule will have no impact on competition and employment.

Adren O. Wilson  
Assistant Secretary  
0708#080

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
Board of Trustees of the Louisiana  
State Employees' Retirement System**

Contributions by Electronic Funds Transfer  
or Certified Check (LAC 58:I.111)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to adopt LAC 58:I.111, which would allow LASERS to require that agencies remit employee and employer contributions by electronic funds transfer (EFT) or by certified check. It is being proposed to help ensure that

LASERS remain actuarially sound and safeguard prompt payments to members. The proposed Rule complies with and is enabled by R.S. 11:515. No preamble for these proposed Rules has been prepared.

**Title 58  
RETIREMENT**

**Part I. Louisiana State Employees' Retirement System  
Chapter 1. General Provisions**

**§111. Contributions by Electronic Funds Transfer or  
Certified Check**

A. Under circumstances as determined by the executive director, LASERS may require agencies to submit employee and employer contributions by electronic funds transfer ("EFT") or certified check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 33:

**Family Impact Statement**

This proposed 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 there should be no known or foreseeable effect on:

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

Interested persons may submit written comments on the proposed changes until 4:30 p.m., September 28, 2007, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Contributions by Electronic Funds  
Transfer or Certified Check**

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

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

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

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule change.

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

No calculable effect on costs or benefits to non-governmental groups or persons is anticipated to result from the amendment of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou  
Executive Director  
0708#075

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
Board of Trustees of the Louisiana  
State Employees' Retirement System**

**Spousal Consent (LAC 58:I.2901)**

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to amend LAC 58:I.2901, which would allow members to obtain spousal consent to their selection of retirement options and DROP beneficiaries at any time prior to retirement. The proposed Rule amendment complies with and is enabled by R.S. 11:446, R.S. 11:477 and R.S. 11:515. No preamble for this proposed Rule amendment has been prepared.

**Title 58  
RETIREMENT**

**Part I. Louisiana State Employees' Retirement System  
Chapter 29. Spousal Consent**

**§2901. Spousal Consent to Retirement Option**

A. If a member is married and wishes to elect to retire under either the maximum plan, Option I, or else choose from Options II, III or IV(B) while naming someone other than his spouse as his beneficiary, he must obtain the consent of his spouse in writing on a form provided by LASERS executed before a notary public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:446, R.S. 11:477 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:

**Family Impact Statement**

This proposed 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 there should be no known or foreseeable effect on:

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

Interested persons may submit written comments on the proposed changes until 4:30 p.m., September 28, 2007, to Steve Stark, Board of Trustees for the Louisiana State

Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou  
Executive Director

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

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

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

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

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule change.

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

Married persons who, together with their spouse, share a community property regime are affected. There should be no effect on costs or benefits to these persons resulting from the amendment of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou  
Executive Director  
0708#076

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Public Oyster Seed Grounds (LAC 76:VII.517)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to designate additional Lake Mechant Public Oyster Seed Grounds in Terrebonne Parish to be added to the Lake Mechant Public Oyster Seed Ground as described in LAC 76:VII.517. Authority to establish this addition to the Lake Mechant Public Oyster Seed Ground is vested in the Wildlife and Fisheries Commission by R.S. 56:6(12) and R.S. 56:434(A).

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 5. Oyster**

**§517. Public Oyster Seed Grounds—Portions of Lake Mechant, Lake Tambour, Lake Chien, Lake Felicity, Deep Lake, and Baratavia Bay**

A. The following areas are designated as oyster seed grounds:

- 1.a. Lake Mechant, Terrebonne Parish: The state waterbottoms within the following corners.

29° 19' 45.36273" N	90° 58' 19.84034" W
29° 18' 52.50955" N	90° 57' 32.90680" W
29° 18' 41.04086" N	90° 55' 58.95532" W
29° 16' 47.29750" N	90° 56' 44.37133" W
29° 18' 33.55333" N	90° 57' 37.82946" W
29° 18' 46.69380" N	90° 59' 21.09926" W

b. Additional portions of the Lake Mechant Public Oyster Seed Grounds are described as follows.

i. Addition 1: Beginning at a point on the border of the existing Lake Mechant Public Oyster Seed Grounds at latitude 29 degrees 18 minutes 33.5533 seconds N and longitude 90 degrees 57 minutes 37.8295 seconds W; thence southerly to a point at latitude 29 degrees 18 minutes 14.8543 seconds N and longitude 90 degrees 57 minutes 39.1397 seconds W; thence southerly to a point at latitude 29 degrees 18 minutes 03.4928 seconds N and longitude 90 degrees 57 minutes 38.8965 seconds W; then southerly to a point at latitude 29 degrees 17 minutes 42.1030 seconds N and longitude 90 degrees 57 minutes 28.7632 seconds W; thence southwesterly to a point at latitude 29 degrees 17 minutes 36.2469 seconds N and longitude 90 degrees 57 minutes 35.9244 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 29.3388 seconds N and longitude 90 degrees 57 minutes 30.9068 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 18.0878 seconds N and longitude 90 degrees 57 minutes 26.2988 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 12.1229 seconds N and longitude 90 degrees 57 minutes 22.7942 seconds W; thence southeasterly to a point at latitude 29 degrees 17 minutes 04.4969 seconds N and longitude 90 degrees 56 minutes 57.2000 seconds W; thence southeasterly to a point at latitude 29 degrees 17 minutes 01.3854 seconds N and longitude 90 degrees 56 minutes 51.4572 seconds W; thence northwesterly along the existing Lake Mechant Public Oyster Seed Grounds border to the point of beginning.

ii. Addition 2: Beginning at a point on the border of the existing Lake Mechant Public Oyster Seed Grounds at latitude 29 degrees 18 minutes 41.0409 seconds N and longitude 90 degrees 55 minutes 58.9553 seconds W; thence southerly to a point at latitude 29 degrees 18 minutes 30.9866 seconds N and longitude 90 degrees 56 minutes 01.3860 seconds W; thence southeasterly to a point at latitude 29 degrees 18 minutes 15.9476 seconds N and longitude 90 degrees 55 minutes 53.2347 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 59.3179 seconds N and longitude 90 degrees 56 minutes 07.0156 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 21.1676 seconds N and longitude 90 degrees 56 minutes 21.2961 seconds W; thence southerly to a point at latitude 29 degrees 16 minutes 47.2975 seconds N and longitude 90 degrees 56 minutes 44.3713 seconds W; thence northerly along the border of the existing Lake Mechant Public Oyster Seed Grounds to the point of beginning.

2. - 6. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(12) and R.S. 56:434(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 27:214 (February 2001), repromulgated LR 27:431 (March 2001), amended LR 33:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

#### Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out in R.S. 49:972(B).

Interested persons may submit written comments relative to the proposed Rule until 4:30 p.m., Thursday, October 4, 2007 to Patrick D. Banks, LDWF Marine Fisheries Division, Box 98000, Baton Rouge, LA 70898-9000.

Patrick C. Morrow  
Vice-Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Public Oyster Seed Grounds

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

No implementation costs or savings to state or local governmental units are anticipated.

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

Revenue collections of state and local governmental units are anticipated to experience a slight positive impact from additional oyster tag sales and taxes collected on purchases of supplies and oysters harvested. The amount of the impact is expected to be small due to the small size of the area being added to the Lake Mechant Public Oyster Seed Grounds.

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

Oyster harvesters, dealers and input suppliers who operate in the Lake Mechant area will benefit from the increase in public oyster seed grounds, since oyster resources located outside public oyster seed grounds and lease areas are unavailable for harvest. The impact to oyster harvesters and businesses cannot be estimated at this time and will depend on the number of oysters harvested from the additional Lake Mechant Public Oyster Seed Grounds. The magnitude of the impact is expected to be small due to the small size of the area being added.

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

Competition and employment in the public and private sectors are not anticipated to be impacted.

Janice A. Lansing  
Undersecretary  
0708#057

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office