

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Structural Pest Control Commission

Donation of Structural Pest Control Work (LAC 7:XXV.163)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., The Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission proposes to adopt regulations governing the donation of structural pest control work to individuals who otherwise could not afford such services in order to improve the living conditions and their quality of life. These rules comply with and are enabled by R.S. 3:3203(A).

No preamble concerning the proposed rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§163. Donation of Structural Pest Control Work

A. Structural pest control operators licensed by the Structural Pest Control Commission may donate, in accordance with this Section, structural pest control services to eligible individuals or organizations who otherwise could not afford such services in order to improve living conditions and their quality of life.

B. The Structural Pest Control Commission, at the request of the Louisiana Pest Control Association or any other state or local Not-For-Profit association of pest control operators, may approve a plan for the donation of pest control services to individuals or organizations that are in need of, but unable to afford such services.

C. Any plan submitted to the Structural Pest Control Commission must state:

1. the purpose of the plan;
2. the organization(s) or group(s) of persons receiving such services;
3. the nature of the services to be provided;
4. the location(s) at which the services are to be provided;
5. the length of time the program is to run;
6. the licensed pest control operators who are expected to participate;
7. any other information the commission may deem necessary to properly evaluate the plan.

D. Upon approval of any such plan by the commission, the Louisiana Department of Agriculture and Forestry shall suspend:

1. the fee for termite contracts required under LAC 7:XXV.117.M; and

2. the requirements of LAC 7:XXV.123 pertaining to contracts.

E. The Rules and Regulations suspended by Subsection D above are waived only for the duration of the program and only in connection with structural pest control work performed by participating licensed pest control operators on buildings and structures at the specific locations listed in the approved plan.

F. The month of June is the Louisiana Pest Control Month. All programs for the donation of pest control work shall begin in June and end at the time specified in the plan that is submitted and approved by the Structural Pest Control Commission. The commissioner may, for exceptional circumstances, approve a plan to begin in a month other than June.

G. A copy of the approved plan, showing the list of specific eligible locations and the beginning and ending dates of the program shall be published in the potpourri section of the *Louisiana Register* at least 30 days prior to the beginning of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203(A).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 24:

All interested persons may submit written comments on the proposed rules through April 27, 1998, to David Fields, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments in writing at the address above.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Donation of Structural Pest Control Work

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated effect on revenue collections is expected to be a decrease of about \$200 to the state. The regulation suspends the \$5 fee for termite contracts required under LAC 7:XXV.117.M. The estimated number of contracts suspended is about 40.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The estimated benefits will be to eligible individuals or organizations who otherwise could not afford such services in order to improve the living conditions and their quality of life.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will not be an effect on competition and employment.

Skip Rhorer
Assistant Commissioner
9803#044

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Performance Planning and
Review (PPR) Exceptions

The Department of Civil Service, Civil Service Commission gives notice that the following rule change will be considered to provide agencies with a means to obtain exceptions and/or variations to the Performance Planning and Review (PPR) system found in Chapter 10.

Adopt Rule 10.17

10.17 Exceptions

For compelling reasons, the director may approve exceptions to these rules.

Explanation:

This rule is proposed as a means of allowing the director to authorize documented and necessary exceptions and/or variations to the Performance Planning and Review system established by Chapter 10.

This rule change has been proposed as a means of providing agencies with a process to obtain variations in the rules found in Chapter 10. For example, educational institutions that are closed for portions of the calendar year may find it impossible to remain in compliance with Rules 10.5, 10.6, 10.7, and/or 10.13. The addition of the proposed rule would enable the director to individually assess the need for variations and approve those that are deemed to be compelling.

Persons interested in making comments relative to these proposals may do so at the public hearing or by writing to the director of State Civil Service at Box 94111, Baton Rouge, LA 70804-9111. If any accommodations are needed, notify the Department of Civil Service prior to this meeting.

The Civil Service Commission will hold a public hearing on April 8, 1998 to consider the rule proposal. The hearing will begin at 9 a.m. and will be held in the Department of Civil Service Second Floor Hearing Room, DOTD Annex Building, 1201 Capitol Access Road, Baton Rouge, LA.

Allen H. Reynolds
Director

9803#009

NOTICE OF INTENT

**Department of Economic Development
Office of Financial Institutions**

Disbursement of Security Monies (LAC 10:XV.503)

In accordance with the authority granted by the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority granted by R.S. 9:3576.1 et seq., the Commissioner of the Office of Financial Institutions gives notice of his intention to promulgate a rule to provide for the

procedures this office and all affected constituents are to follow upon suit being brought against a surety bond or other security monies; and further to provide for a dissolution procedure to liquidate a forfeited surety bond or other security monies.

The text of this rule may be viewed in its entirety in the emergency rules section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed rule, via U.S. Mail only, to Gary L. Newport, Chief Attorney, Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, no later than 4 p.m. Friday, April 10, 1998.

Larry L. Murray
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Disbursement of Security Monies**

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

The only anticipated cost associated with the implementation of this rule is the \$160 publication cost in the *Louisiana Register*.

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

There will be no effect 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)

The proposed revision will provide procedures to distribute funds received by this office from collection agencies through surety bonds or other pledged securities in the amount of \$10,000. Clients of collection agencies who have claims against the bonds or other security will benefit by recovering money collected on their behalf but not remitted. It is estimated that one \$10,000 disbursement will occur annually.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Larry L. Murray
Commissioner
9803#047

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Total Quality Management
(TQM) Certification (LAC 28:I.903)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education has approved for advertisement an amendment to Bulletin 746, referenced in LAC 28:I.903.A. The amendment is to the associate degree

general education instructor's certification requirements to certify them to teach the Total Quality Management (TQM) course in the Technical College System.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.
HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 24:

**Associate Degree—General Education Instructor
Chapter XXXVIII. Associate Degree General Education
Instructors: Full-Time T.O. Positions.**

A.1. - 4. ...

5. Special certification is required to teach the Total Quality Management (TQM) Course. The instructor must have a minimum of a bachelor's degree and have completed the 25-hour Train the Trainer course or have a minimum of a bachelor's degree and successfully completed Psychology 200 (Total Quality Management), 3 credit hours, with a minimum grade of C.

6. In exceptional cases, outstanding professional experience and demonstrated contributions to the teaching discipline may be presented in lieu of formal academic preparation. Such exceptions must be justified by the institution on an individual basis, and

* * *

**Chapter XXXIX. Associate Degree General Education
Instructor: Full Time T.O. (JTPA, Carl Perkins, etc.),
Extension, Part-Time, and Substitute**

A.1. - 4. ...

5. Special certification is required to teach the Total Quality Management (TQM) Course. The instructor must have a minimum of a bachelor's degree and have completed the 25-hour Train the Trainer course or have a bachelor's degree and have successfully completed Psychology 200 (Total Quality Management), 3 credit hours, with a minimum grade of C.

6. In exceptional cases, outstanding professional experience and demonstrated contributions to the teaching discipline may be presented in lieu of formal academic preparation. Such exceptions must be justified by the institution on an individual basis, and

* * *

Interested persons may submit comments until 4:30 p.m., May 10, 1998 to Jeannie Stokes, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Total Quality Management
(TQM) Certification**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
BESE's estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the *Louisiana Register* is approximately \$60.
- 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 a result of this action.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups as a result of this action.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition and employment as a result of this action.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9803#043

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Vo-Tech Senior Citizen Tuition
Exemption (LAC 28:I.Chapter 15)

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 proposes to amend LAC 28:I.1523.E. The amendment adds guidelines to allow Louisiana's senior citizens to obtain training in the Louisiana Technical College System tuition free.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 15. Vocational and Vocational-Technical
Education**

Subchapter B. Vocational-Technical Education

§1523. Students

A. - E.22. ...

23. Senior Citizen Tuition Exemption Policy. A *senior citizen* is defined as any person 60 years of age or older.

a. Senior citizens may enroll in a training program/course tuition free on a space available basis each quarter.

b. At the time of application, the senior citizen will provide proof of age through any legal document (birth certificate, driver's license, etc.).

c. The senior citizen will be responsible for application fees, books and supplies, and any other fees assessed by the campus.

d. The senior citizen enrollment count in any program/course cannot be applied to the minimum number of students required to start a new program or to keep a program/course open.

e. The senior citizen will follow the same policies and procedures established for all other students.

f. The senior citizen enrollment status shall be indicated on a separate section of the technical college data collection system.

g. This policy does not apply to senior citizens who are receiving financial assistance which covers the cost of tuition.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 3:404 (October 1977), amended LR 4:240 (July 1978), LR 6:650 (November 1980), LR 8:323 (July 1980), LR 9:209 (April 1983), LR 10:7 (January 1984), LR 10:200 (March 1984), LR 11:617 (June 1985), LR 11:1065 (November 1985), LR 11:1138 (December 1985), LR 12:14 (January 1986), LR 12:92 (February 1986), LR 12:667 (October 1986), LR 12:830 (December 1986), LR 13:84 (February 1987), LR 13:160 (March 1987), LR 14:11 (January 1988), LR 14:12 (July 1988), LR 14:409 (October 1988), LR 14:704 (October 1988), LR 14:790 (November 1988), LR 16:297 (April 1990), LR 16:768 (September 1990), LR 17:589 (June 1991), LR 17:957 (October 1991), LR 18:29 (January 1992), LR 19:1550 (December 1993), LR 20:464 (May 1995), LR 22:809 (September 1996), LR 24:

Interested persons may submit written comments until 4:30 p.m., May 10, 1998, to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Vo-Tech Senior Citizen Policy**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
BESE's estimated implementation cost for printing and distributing this policy change and first page of the fiscal and economic impact statement in the *Louisiana Register* is approximately \$60.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There would be a fiscal loss of \$105 per senior citizen each quarter that they are enrolled.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This would allow senior citizens to attend school tuition free at a savings of \$105 per quarter.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There would be no effect on competition but could afford a senior citizen the opportunity to retrain for a new job skill for employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9803#042

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Elections and Registration
Office of the Commissioner**

Elections and Registration Information Network
Registrar of Voters User Manual (LAC 31:II.301)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 18:31, the Department of Elections and Registration hereby proposes to adopt the rule detailed below which provides for an Elections and Registration Information Network Registrar of Voters User Manual.

In accordance with the provisions of R.S. 18:31, the Department of Elections and Registration is proposing to adopt a rule to provide for an Elections and Registration Information Network Registrar of Voters User Manual. This manual shall establish procedures with respect to all records, data, and information required for the registration of voters and the transfer of information to the department. In addition, a uniform cost for the preparation of lists of registered voters shall be included in the user manual.

A copy of the preamble may be obtained by writing to Jerry M. Fowler, Commissioner of Elections, Department of Elections and Registration, Box 14179, Baton Rouge, LA 70898-4179.

**Title 31
ELECTIONS**

Part II. Voter Registration

Chapter 3. Registrar of Voters

**§301. Elections and Registration Information Network
Registrar of Voters User Manual**

A. The commissioner of elections has established a state voter registration computer system for the registration of voters throughout the state.

B. The commissioner of elections shall provide all registrars of voters with an Elections and Registration Information Network Registrar of Voters User Manual to be utilized with respect to the state voter registration computer system. This manual shall establish procedures with respect to all records, data, and information required for the registration of voters and the transfer of information to the department. All registrars of voters shall utilize this manual to insure the proper registration of voters. A uniform cost for the preparation of lists of registered voters shall be included

in the user manual. Any updates of the manual provided by the Department of Elections and Registration to the registrars of voters shall be incorporated into the manual by each registrar of voters.

C. The Elections and Registration Information Network Registrar of Voters User Manual shall be submitted to the state attorney general's office for approval. Any updates to the manual shall also receive approval by the state attorney general's office.

D. Copies of the Elections and Registration Information Network Registrar of Voters User Manual can be viewed at the Department of Elections and Registration Office, 4888 Constitution Avenue, Baton Rouge, LA or at each office of the registrars of voters throughout the state, or at the Office of the State Register, 1051 North Third Street, Suite 512, Baton Rouge, LA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18 and R.S. 18:31.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 24:

A public hearing on this proposed rule will be held on Monday, April 27, 1998 at the Radisson Hotel and Conference Center, 4728 Constitution Avenue, Baton Rouge, LA, beginning at 1:30 p.m. All interested persons will be afforded an opportunity to present their views orally at said hearing.

Interested persons may submit written comments on the proposed rule until 4:30 p.m. on Friday, April 17, 1998 to Jerry M. Fowler, Commissioner of Elections, Department of Elections and Registration, Box 14179, Baton Rouge, LA 70898-4179.

Jerry M. Fowler
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Elections and Registration Information
Network Registrar of Voters User Manual**

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

The estimated implementation cost to the state is projected as a cost of \$160 to print the notice of intent and final rule in the *Louisiana Register*. There would be an additional cost to file a copy of the manual with the Office of the State Register as provided in the rule. This cost is projected to be a minimal cost to the state.

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

There is no estimated effect on revenue collections as the result of the adoption of this rule since the department currently has in place a fee schedule for generating voter registration lists. The fee schedule is the same as the fee schedule proposed in the manual.

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

There is no estimated increase or decrease in the cost for persons requesting voter registration lists since we are proposing same fee schedule which is currently being assessed.

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

There would be no effect on competition and employment.

Carol H. Guidry
Assistant Commissioner
Management and Finance
9803#036

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Elections and Registration
Office of the Commissioner**

**Procurement of Voting Machine Drayage
(LAC 31:III.Chapter 7; repeal of §§737 and 739)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 18:1371, the Department of Elections and Registration hereby proposes to amend LAC 31:III.701, 705, 707, 711, 715, 719, 729, 735, 743, and 747; and repeal §§737 and 739. Chapter 7 is being renamed "Procurement of Voting Machine Drayage" to reflect changes in the content of the Chapter.

A proposed amendment is made to §719 to change the number of days to execute a contract from 10 days to 20 days.

The proposed amendments are required as the result of the passage of Act 600 and Act 873 of the 1997 Regular Legislative Session.

Act 600 transferred the function for the procurement of storage facilities for voting machines from the Department of Elections and Registration to the Division of Administration.

Act 873 required the following changes:

1. bids for drayage can be bid on a regional, as well as a parish, basis;
2. notices of bid shall be forwarded to the parish governing authority and clerk of court;
3. notice of bid shall be prominently posted by the clerk of court
4. invitation of bids shall be advertised in the newspaper of general circulation printed in such parish or, if there is no newspaper printed in such parish, in a newspaper printed in the nearest parish; and
5. notices of invitation of bids shall be furnished 30 days prior to the opening of the bids.

A copy of the preamble may be obtained by writing to Jerry M. Fowler, Commissioner of Elections, Department of Elections and Registration, Box 14179, Baton Rouge, LA 70898-4179.

**Title 31
ELECTIONS**

Part III. Procurement

Chapter 7. Procurement of Voting Machine Drayage

Subchapter A. General Provisions

**§701. Authority and Duties of the Commissioner of
Elections**

A. The commissioner of elections shall have the authority and responsibility to promulgate rules and regulations governing the procurement, management, and control of all

voting machines drayage required and set forth in R.S. 18:1371.

B. The chief procurement officer of the Department of Elections and Registration shall be the commissioner of elections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 24:

§705. Delegation of Signature Authority

A. The commissioner of elections or his designee shall sign all contracts for drayage of voting machines.

B. This delegation of signature authority must be in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 24:

§707. Definition

Drayage—the transporting or cartage of voting equipment as directed by the commissioner of elections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 24:

Subchapter B. Competitive Sealed Bidding

§711. Invitation for Bids, Public Notice, and Bid

Opening

A. All contracts for the drayage of voting machines shall be awarded by competitive sealed bidding on a parish or regional basis.

B. Competitive sealed bidding shall be accomplished by sending out written notices to persons known to be able to provide the department's requirements, and by advertising in accordance with R.S. 18:1371 at least 30 days prior to bid opening.

1. Written notices shall be mailed to those persons who have previously requested an Invitation for Bids for said parish within the previous four years.

2. The written notices and advertisements shall announce:

- a. the type of contract;
- b. the parish for which the contract is required;
- c. the method of acquiring an Invitation for Bids; and
- d. the date, time, and place of bid opening.

3. Advertisements shall be published in the state official journal and in the official journal of the parish in which the contract is required. Advertisements shall be published in a newspaper of general circulation printed in such parish or, if there is no newspaper printed in such parish, in a newspaper printed in the nearest parish that has a general circulation in the parish covered by the contract.

4. A notice shall be sent to the parish governing authority and the clerk of court of the parish in which the contract is required. The clerk of court shall prominently post such notice in his office.

C. The Invitation for Bids shall contain:

1. complete description of the transportation required;
2. all applicable terms, conditions, and other requirements;
3. types and limits of insurance required;
4. bid and performance bonding requirements; and
5. factors which will be used to determine responsibility of bidders.

D. Bids shall be publicly opened and read as specified in the Invitation for Bids in the presence of one or more witnesses. Bidders and the public may be present at any bid opening.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371 and R.S. 39:1594.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 19:175 (February 1993), LR 24:

§715. Responsibility of Bidders

A. The commissioner of elections or his designee may make reasonable inquiries to determine the responsibility of prospective contractors. In making his determination, the following factors will be considered:

1. has available the appropriate financial, material, equipment, and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability to meet all contractual requirements;
2. has a satisfactory record of performance on previous state contracts and with other persons;
3. has a satisfactory record of integrity and compliance with the law;
4. is qualified legally to contract with the state of Louisiana (Prior to award of any contract, the successful bidder shall affirm by affidavit that he or she and/or the principal officers of a corporation are not currently under any felony conviction.); and
5. has reasonably supplied any information requested by the commissioner of elections in establishing responsibility.

B. Each bidder who is determined to be nonresponsible shall be notified in writing. Such notification shall state all reasons for disqualification, and give each bidder who is proposed to be disqualified, a reasonable opportunity to refute the reasons for disqualification at an informal hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1601.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:596 (June 1991), amended LR 24:

§719. Bid Guaranty and Bond

A. If specified in the Invitation for Bids, a bond, certified check, or money order payable to the Department of Elections and Registration in the amount of 5 percent of the bid must accompany each bid submitted.

B. If a bidder withdraws his bid after bid opening, without complying with LAC 31:III.717, or fails to execute a contract within 20 days of request, the bid bond or other security shall be forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:596 (June 1991), amended LR 24:

§729. Rejection of Bids; Cancellation of Solicitations

A. The commissioner of elections reserves the right to reject any and all bids when it is in the best interest of the state of Louisiana.

1. Reasons for rejecting a bid include, but are not limited to:

a. a determination of nonresponsibility has been made against a bidder;

b. the bid is not responsive (i.e., it did not meet specifications or comply with terms and conditions).

2. Reasons for canceling a solicitation include, but are not limited to:

a. the department no longer requires the service;

b. bids received exceeded budgeted funds or were unreasonable;

c. the solicitation was flawed (i.e., specifications were not complete or were ambiguous);

d. there is reason to believe that the bids received may have been collusive;

e. there is inadequate competition indicated by low response to the solicitation.

B. When bids are rejected, or a solicitation is canceled, written notices shall be given to the bidders, giving the reasons for the rejection or cancellation.

C. When a solicitation is canceled, where appropriate, bidders will be given the opportunity to bid on the new solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581, R.S. 39:1599, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:597 (June 1991), amended LR 24:

§735. Specifications

All specifications shall be written so as to promote as much competition as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:598 (June 1991), amended LR 24:

§737. Warehouse Specifications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:21, R.S. 39:1581, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:598 (June 1991), repealed LR 24:

§739. Lease Amendments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:2(B), R.S. 39:1644, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:598 (June 1991), repealed LR 24:

§743. Right to Protest

A. All proceedings herewith shall be carried out in accordance with the Conduct of Hearing Rules set forth in LAC 34:I.Chapter 31.

B. Any bidder may protest a solicitation or an award of a contract to the commissioner of elections.

C. In regard to the solicitation of a drayage contract, the protest must be made in writing at least two days prior to the opening of bids.

D. In regard to the award of any contract, a written protest must be made within 14 days after the contract is awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1671 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:598 (June 1991), amended LR 24:

§747. Suspension and Debarment

A. A bidder and its principal officers and agents may be debarred or suspended from consideration for award of contracts during an investigation for probable cause if it is in the best interests of the state.

B. The commissioner of elections may suspend or debar a person for cause after notice to the bidder has been given, and the bidder has had a reasonable opportunity to respond. A bidder may be suspended if the commissioner of elections determines that there is probable cause to believe that the bidder has engaged in any activity to lead to debarment.

1. The period of time for the suspension of a drayage contract shall be one complete cycle of bidding in all parishes.

2. The period of time for debarment of a drayage contract shall be two complete cycles of bidding in all parishes.

C.1. Causes for debarment shall be in accordance with R.S. 39:1672(C).

2. In addition to the provisions of R.S. 39:1672(C), the commissioner of elections may debar a bidder for the following reasons:

a. the bidder has withdrawn a bid after an award, for whatever reason, more than once;

b. the commissioner of elections may declare other specific reasons for suspension or debarment which is in the best interests of the state.

D. The commissioner of elections shall notify the debarred or suspended bidder in writing of the decision stating the reasons for the action taken. Such notification shall also inform the debarred or suspended bidder's rights to administrative and judicial review.

E. The decision of the commissioner of elections or his designee shall be final unless:

1. the decision is fraudulent; or

2. the person has appealed to the commissioner of administration in accordance with R.S. 39:1684.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1672 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:599 (June 1991), amended LR 24:

Interested persons may submit written comments on the proposed rule until 4:30 p.m. on Friday, April 17, 1998, to Jerry M. Fowler, Commissioner of Elections, Department of Elections and Registration, Box 14179, Baton Rouge, LA 70898-4179.

A public hearing on this proposed rule will be held on Monday, April 27, 1998, at the Radisson Hotel and Conference Center, 4728 Constitution Avenue, Baton Rouge,

LA, beginning at 1 p.m. All interested persons will be afforded an opportunity to present their view orally at said hearing.

Jerry M. Fowler
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Procurement of Voting Machine Drayage**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated implementation cost to the state is projected as a cost of \$640 to the print the notice of intent and final rule in the *Louisiana Register*. There would be a savings of \$522 for advertising bids for the storage of voting machines. The bid process for the storage of voting machines was transferred to the Division of Administration.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections as the result of the adoption of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There would be no effect on competition and employment.

Carol H. Guidry
Assistant Commissioner
Management and Finance
9803#037

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

**Reportable Quantity List
(LAC 33:I.3931)(OA023A*)**

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 Office of the Secretary regulations, LAC 33:I.3931 (OS023A*).

This proposed rule is identical to federal law or regulation, 40 CFR 117.3 (7/1/97 Edition) Table 117.3—Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and 40 CFR 302.4 (7/1/97 Edition) Table 302.4—List of Hazardous Substances and Reportable Quantities; Appendix A to Section 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. 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 meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

The Reportable Quantity List for Pollutants will be replaced by an incorporation by reference to the corresponding federal lists. Incorporation of the federal lists will add an additional 361 compounds and adjust the reporting thresholds for 81 compounds in Louisiana's regulations. The amendments will make the state list more consistent with the federal EPA lists and simplify future revisions. Existing state reportable quantities that differ from the federal lists have been preserved in a Modifications or Exceptions table. EPA made significant amendments to the federal reportable quantity lists in June 1995 and May 1996. The department proposed amending its reportable quantity list to add new listings and adjust existing listings. Public comment on the proposal included a suggestion to adopt federal reporting thresholds by reference. The basis and rationale for this rule are to assure the Reportable Quantity List for Pollutants in Louisiana is equivalent to the EPA reportable quantity lists. Comparison of federal and state reportable quantity lists will be unnecessary for most pollutants. Eliminating the need to refer to multiple lists during a release will minimize confusion and delays that could worsen an emergency condition.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification Regulations

**Chapter 39. Notification Regulations and Procedures
for Unauthorized Discharges
Subchapter E. Reportable Quantities for Notification
of Unauthorized Discharges**

§3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

- 1. 40 CFR 117.3 (7-1-97 Edition) Table 117.3—Reportable Quantities of Hazardous Substances Designated Pursuant to section 311 of the Clean Water Act; and
- 2. 40 CFR 302.4 (7-1-97 Edition) Table 302.4—List of Hazardous Substances and Reportable Quantities; appendix A to §302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances.

B. Modifications or Exceptions. The following modifications or exceptions are made to the federal reportable quantity lists incorporated by reference in Subsection A of this Section.

Pollutant	CAS No. ¹	RCRA ² Waste Number	Pounds
Allyl chloride	107051		1000/10 [®]
Aniline	62533	U012	5000/1000 [®]
Antimony*	7440360		5000/100 [®]
Antimony Compounds	20008		100 [®]

Barium*	7440393		100 [Ⓔ]
Barium compounds	20020		100 [Ⓔ]
Benzenamine	62533	U012	5000/1000 [Ⓔ]
Biphenyl	92524		100/100 [Ⓔ]
1-Butanol	71363	U031	5000/1000 [Ⓔ]
2-Butanone	78933	U159	5000/1000 [Ⓔ]
n-Butyl alcohol	71363	U031	5000/1000 [Ⓔ]
Carbonic dichloride	75445	P095	10/1 [Ⓔ]
Carbonyl sulfide	463581		100/100 [Ⓔ]
Chlorinated Dibenzo Furans, all isomers			1
Chlorine Dioxide	10049044		1
Chromium ³ *	7440473		5000/100 [Ⓔ]
Chromium compounds	20064		100 [Ⓔ]
Copper ³	7440508		5000/100 [Ⓔ]
Copper Compounds	20086		100 [Ⓔ]
Cumene	98828	U055	5000/1000 [Ⓔ]
1,3-Dichloropropylene	542756		100 [Ⓔ]
Ethyl acrylate	140885	U113	1000/10 [Ⓔ]
Ethylene	74851		5000
Ethylene glycol	107211		5000/5000 [Ⓔ]
Glycol ethers **			100 [Ⓔ]
Hexane	110543		5000/1000 [Ⓔ]
Hydrochloric acid	7647010		5000/1000 [Ⓔ]
Hydrofluoric acid	7664393	U134	100/10 [Ⓔ]
Hydrogen chloride	7647010		5000/1000 [Ⓔ]
Hydrogen fluoride	7664393	U134	100/10 [Ⓔ]
1,3-Isobenzofurandione	85449	U190	5000/1000 [Ⓔ]
Manganese*	7439965		100 [Ⓔ]
Manganese compounds			100 [Ⓔ]
Methanethiol	74931	U153	100/1 [Ⓔ]
Methyl acrylate	96333		10 [Ⓔ]
Methyl ethyl ketone (MEK)	78933	U159	5000/1000 [Ⓔ]
Methyl isobutyl ketone	108101	U161	5000/1000 [Ⓔ]
Methylmercaptan	74931	U153	100/1 [Ⓔ]
Methyl methacrylate	80626	U162	1000/100 [Ⓔ]
4-Methyl-2-pentanone	108101	U161	5000/1000 [Ⓔ]
Methylene diphenyl isocyanate	101688		1000 [Ⓔ]
Nitric acid	7697372		1000/100 [Ⓔ]

Oil			1 barrel
Phthalic anhydride	85449	U190	5000/1000 [Ⓔ]
Polynuclear Aromatic Hydrocarbons ***			1
Produced Water			1 barrel
2-Propenoic acid, ethyl ester	140885	U113	1000/10 [Ⓔ]
2-Propenoic acid, 2-methyl-, methyl ester	80626	U162	1000/100 [Ⓔ]
Propionaldehyde	123386		1000/100 [Ⓔ]
Strontium sulfide	1314961	P107	100
Sweet Pipeline Gas (Methane/Ethane)			42000 (1,000,000 scf)
Thiomethanol	74931	U153	100/1 [Ⓔ]
Vinyl acetate	108054		5000/100 [Ⓔ]
Vinyl acetate monomer	108054		5000/100 [Ⓔ]
Volatile Organic Compounds not otherwise listed ⁴			5000
F003 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:		F003	100
Methyl isobutyl ketone	108101		5000/1000 [Ⓔ]
n-Butyl alcohol	71363		5000/1000 [Ⓔ]
F005 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:		F005	100
Methyl ethyl ketone	78933	U159	5000/1000 [Ⓔ]

* No reporting of releases into the ambient air of this metal is required if the diameter of the pieces of solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

** The combined emissions of all glycol ethers shall be totaled to determine if a Reportable Quantity has been exceeded.

*** The combined emissions of all Polynuclear Aromatic Hydrocarbons (PAHs), excluding any PAHs otherwise listed, shall be totaled to determine if a Reportable Quantity has been exceeded.

¹ Chemical Abstracts Service Registry Number.

² Resource Conservation and Recovery Act of 1976, as amended.

³ Prompt notification of releases of massive forms of these substances is not required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers (0.004 inches).

⁴ The combined emissions of all volatile organic compounds (VOCs), excluding any VOCs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded. VOC is defined in LAC 33:III.111 and exempt compounds are listed in LAC 33:III.2117.

[Ⓔ] The first RQ listed denotes the reportable quantities that will apply to unauthorized emissions based on total mass emitted into or onto all media within any consecutive 24-hour period. The second RQ listed denotes the reportable quantities that will apply to unauthorized emissions based on total mass emitted into the atmosphere.

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

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

A public hearing will be held on April 27, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS023A*. Such comments must be received no later than April 27, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486. The comment period for this rule ends on the same date as the public hearing.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Herman Robinson
Assistant Secretary

9803#062

NOTICE OF INTENT

Office of the Governor Office of Elderly Affairs

FY 1998-99 State Plan
on Aging (LAC 4:VII.1317)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend LAC 4:VII.1317, the FY 1998 - 1999 State Plan on Aging, effective July 1, 1998. This rule change is in accordance with the *Code of Federal Regulations*, 45 CFR 1321.19 "Amendments to the State Plan," and 45 CFR 1321.35 "Withdrawal of Area Agency Designation" (Volume 53, Number 169, pages 33769 and 33770). The purposes of this rule change are:

(1) to reverse the designation of the Governor's Office of Elderly Affairs as the Area Agency on Aging for the Planning

and Service Area (PSA) consisting of Allen, Calcasieu, and Jefferson Davis parishes;

(2) to designate Allen, Calcasieu, and Jefferson Davis parishes as Planning and Service Areas;

(3) to designate Allen Council on Aging, Inc. as the Area Agency on Aging for the Allen Parish PSA;

(4) to designate the Calcasieu Council on Aging, Inc. as the Area Agency on Aging for the Calcasieu Parish PSA; and

(5) to designate the Jefferson Davis Council on Aging, Inc. as the Area Agency on Aging for the Jefferson Davis Parish PSA.

The FY 1998 - 1999 State Plan on Aging was adopted and published by reference in the September 20, 1997 issue of the *Louisiana Register*, Volume 23, Number 9.

Title 4

ADMINISTRATION

PART VII. Governor's Office

Chapter 13. State Plan on Aging

§1317. Area Agencies on Aging

Area Agency on Aging	Planning and Service Area (Parishes Served)
Allen COA	Allen
Beauregard COA	Beauregard
Bienville COA	Bienville
Bossier COA	Bossier
Caddo COA	Caddo
Cajun COA	Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin, St. Mary, Vermilion
Calcasieu COA	Calcasieu
Caldwell COA	Caldwell
Cameron COA	Cameron
Capital Area Agency on Aging (AAA)	Ascension, Assumption, East Feliciana, Iberville, Pointe Coupee, St. Helena, Tangipahoa, Washington, West Baton Rouge, West Feliciana
Cenla AAA	Avoyelles, Catahoula, Concordia, Grant, LaSalle, Rapides, Winn
Claiborne COA	Claiborne
DeSoto COA	DeSoto
East Baton Rouge COA	East Baton Rouge
Jefferson COA	Jefferson
Jefferson Davis COA	Jefferson Davis
Lafourche COA	Lafourche
Lincoln COA	Lincoln
Livingston COA	Livingston
Madison COA	Madison
Morehouse COA	Morehouse

Natchitoches COA	Natchitoches
North Delta AAA	East Carroll, Franklin, Jackson, Richland, Union
New Orleans COA	Orleans
Ouachita COA	Ouachita
Plaquemines COA	Plaquemines
Red River COA	Red River
Sabine COA	Sabine
St. Bernard COA	St. Bernard
St. Charles COA	St. Charles
St. James AAA	St. James
St. John COA	St. John the Baptist
St. Tammany COA	St. Tammany
Tensas COA	Tensas
Terrebonne COA	Terrebonne
Vernon COA	Vernon
Webster COA	Webster
West Carroll COA	West Carroll

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:1317 (October 1993), repealed and promulgated LR 23:1146 (September 1997), amended LR 24:

Inquiries concerning the proposed amendment to the State Plan on Aging may be directed in writing to Karen J. Ryder, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70889-0374.

The Governor's Office of Elderly Affairs will conduct a public hearing to receive comments on the proposed amendment to the state plan on Tuesday, April 24, 1998, in the State Police Training Academy classroom Number 9, 7901 Independence Blvd., Baton Rouge, LA 70806, at 1:30 p.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. The GOEA will receive written comments until 4:00 p.m. April 24, 1998.

Paul F. Arceneaux, Jr.
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: FY 1998-99 State Plan on Aging**

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

The proposed rule will not result in additional costs or savings to state or local governmental units.

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

The proposed rule will not affect revenue collections of local governmental units.

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

The costs associated with preparing and developing an area plan for submission to the state agency for approval are expected to be nominal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not expected to affect competition and employment.

Larry Kinlaw
Appointing Authority
9803#007

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Oil Spill Coordinator's Office**

Natural Resource Damage Assessment
(LAC 43:XXIX.Chapter 1)

In accordance with the provisions of R.S. 30:2480, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office the Oil Spill Coordinator gives notice of its intent to adopt rules for the assessment of natural resources damages from unauthorized discharges of oil.

Title 43

NATURAL RESOURCES

Part XXIX. Oil Spill Prevention and Response

Chapter 1. Natural Resource Damage Assessment

Subchapter A. General Provisions

§101. Declaration and Intent

A. The Louisiana Oil Spill Coordinator in the Office of the Governor adopts these rules pursuant to the Oil Spill Prevention and Response Act (OSPRA), Louisiana Revised Statutes, §30:2451 et seq. These rules are applicable in the event that an unauthorized discharge of oil or a substantial threat of an unauthorized discharge of oil to state waters results in injury to natural resources.

B. These rules should not be in conflict with the National Contingency Plan, the Area Contingency Plan, the State Oil Spill Contingency Plan, and National Oceanic and Atmospheric Administration rules pursuant to the Oil Pollution Act of 1990, Natural Resource Damage Assessments (15 C.F.R. Part 990, published on January 5, 1996, in 61 *Federal Register* 440 et seq.). Thus, the state natural resource trustees are encouraged to cooperate and coordinate their actions with the federal trustees, and in cooperation with the responsible party, to make the environment and the public whole for injuries resulting from unauthorized discharges by assessing natural resource damages for those injuries, presenting a claim for damages (including the reasonable costs of assessing damages), recovering damages, and developing and implementing a plan for the restoration, rehabilitation,

replacement, or acquisition of the equivalent of the injured natural resources and services under their trusteeship.

C. The federal trustees are not bound by these rules and have the right to bring separate claims in addition to any claim made by the state trustees. Even though state and federal trustees may bring a separate claim, double recovery is prohibited. The state trustees may bring a claim for natural resource damages pursuant to their authority under the Oil Pollution Act of 1990 (OPA), 33 USCA, §2701 et seq., or under OSPRA, R.S. 30:2451 et seq. The state trustees may use the natural resource damage assessment procedures established under this rule or under the rules adopted pursuant to OPA, a combination of procedures drawn from both OPA and OSPRA rules, or under the OSPRA rules. Whether the state trustees use OPA procedures, OSPRA procedures, or a combination of OSPRA and OPA procedures, they will perform the field investigation as described in §117 of this Chapter. The state trustees, when using some or all of the OPA procedures, will encourage the federal trustees, as defined in §109 of this Chapter (relating to Definitions), to invite the responsible party to participate in the process pursuant to the procedure in §115 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§103. Applicability

This Chapter applies to any unauthorized discharge or substantial threat on an unauthorized discharge of oil that enters or poses a threat to land, coastal waters, or any other waters of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§105. Usage

As used in these rules, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require. Any reference to "days" in this Chapter shall refer to calendar days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§107. Severability

A. If any section or provision of this Chapter or the application of that section or provision to any person, situation, or circumstance is determined to be invalid by a court of competent jurisdiction for any reason, such adjudication shall not affect any other section or provision of this Chapter, or the application of the adjudicated section or provision to any other person, situation, or circumstance.

B. The Louisiana Oil Spill Coordinator declares that he adopts the valid portions and applications of this Chapter without the invalid sections, and to this end, the provisions of this Chapter are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§109. Definitions

The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the word, term, or phrase is otherwise defined in the text.

Acquisition of Equivalent—the acquisition of a natural resource that provides services substantially equivalent to those injured as the result of an unauthorized discharge of oil.

Area Contingency Plan—the contingency plan required by the Federal Water Pollution Control Act (33 USCA, §1321(j)(4)).

Assessment or Natural Resource Damage Assessment—the process of collecting, compiling, and analyzing information through prescribed procedures and protocols to determine damages for injuries to natural resources and any loss in the services provided by the natural resources resulting from an unauthorized discharge of oil.

Baseline—the condition of the natural resources and services that would have existed had the incident not occurred. Baseline data may be estimated using historical data, reference data, control data, or data on incremental changes (e.g., number of dead animals), alone or in combination, as appropriate.

Coastal Waters—the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Louisiana, including the arms of the Gulf of Mexico subject to tidal influence, estuaries, and any other waters within the state, if such other waters are navigated by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo.

Coordinator—the Louisiana Oil Spill Coordinator.

Cost-Effective—the least costly activity among two or more activities that provide the same or a comparable level of benefits, in the judgment of the trustees.

Damages—damages specified in section 1002(b) of OPA [33 U.S.C. 1002(b)], and includes the costs of assessing these damages, as defined in section 1001(5) of OPA [33 U.S.C. 2701(5)].

Exposure—when all or part of a natural resource is or may be in physical contact with oil or with media containing oil or its degradation products.

Federal Fund—the Oil Spill Liability Trust Fund established by the *Internal Revenue Code of 1986*, 26 USC §9509.

Federal Trustee(s)—official(s) of the federal government designated, according to the Oil Pollution Act of 1990 (33 USCA §2701 et seq.), §2706(b)(2), as trustees who may present a claim for and recover damages for injury to natural resources.

Field Investigation—an evaluation by the State Natural Resource Response Team (state team) of the area impacted by an unauthorized discharge of oil to determine the actual and potential exposure of natural resources and the impact on natural resources and the services they provide for the purpose of evaluating which damage assessment methods, if any, should be utilized by state trustees.

Incident—any unauthorized discharge of oil or series of unauthorized discharges of oil, including the threat of unauthorized discharge of oil, having the same origin, involving one or more vessels, facilities, or any combination thereof.

Injury or Loss or Loss of Services—any observable or measurable adverse change, either long or short term, in the chemical or physical quality or the viability of a natural resource or any impairment of a service provided by that resource resulting either directly or indirectly from exposure to an unauthorized discharge of oil.

Lead Administrative Trustee—the trustee, either the Louisiana Oil Spill Coordinator or his designee, responsible for compiling the administrative record and for coordinating activities of the trustees in the natural resource damage assessment process.

National Contingency Plan—the plan prepared and published as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. §§ 1321 et seq.) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.).

Natural Recovery—the process through which injured natural resources and their services return to baseline condition without additional human intervention.

Natural Resources—all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the State of Louisiana.

Negotiated Assessment—a restoration plan agreed upon by the coordinator, in consultation and agreement with any other state trustees, and the responsible party.

Oil—oil of any kind or in any form including, but not limited to, crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USCA, §9601(14)(A)-(F), and which is subject to the provisions of that Act.

OSPR—the Oil Spill Prevention and Response Act Louisiana Revised Statutes 30:2451 et seq.

On-Scene Coordinator or State On-Scene Coordinator or SOS—the Louisiana Oil Spill Coordinator or state official designated by the coordinator to coordinate and direct response actions under the State Oil Spill Contingency Plan pursuant to R.S. 30:2464.

Pathway—the medium, mechanism, or route by which the incident has resulted in an injury. For discharges of oil, a pathway is the sequence of events by which:

- a. the oil traveled through various components of an ecosystem and contacted the natural resource of concern; or
- b. exposure to oil in one part of an ecosystem was transmitted to the natural resource of concern, without the oil directly contacting the natural resource.

Public Use(s)—the services provided by natural resources for human activities. This includes, but is not limited to, cultural, archaeological, transportation, public water supply, industrial water supply, swimming, fishing, harvesting of natural resources, nature viewing, hunting, diving, sailing, boating, hiking, camping, climbing, photographing, drawing, painting, and other human uses.

Recovery—the return of the injured natural resource and service to baseline conditions.

Reference Area or Reference Resource—an area or natural resource, unaffected by the relevant unauthorized discharge of oil, and comparable in physical, chemical, and biological characteristics or in the level of services provided in the area or areas within which natural resources and the services they provide have been affected directly or indirectly by the unauthorized discharge of oil.

Rehabilitation—those actions which enhance the recovery of injured natural resources.

Replacement—substituting natural resources at or near the impacted area to compensate for the loss of natural resources due to an unauthorized discharge of oil.

Responsible Party or Responsible Parties—

- a. the owner(s) or operator(s) of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate; and
- b. in the case of an abandoned vessel or facility, the party who would have been responsible immediately prior to the abandonment; and
- c. any other person, but not including a person or entity who is rendering care, assistance, or advice in response to a discharge or threatened discharge of another person, who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

Restoration—any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services, and may include:

- a. *Primary Restoration*—any action, including natural recovery, that returns injured natural resources and services to baseline; and
- b. *Compensatory Restoration*—any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.

Restoration Plan—a plan developed for public review and comment that describes the restoration alternatives to be considered in the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources.

Services, Ecological Services, or Natural Resource Services—the services provided by natural resources for the benefit of other natural resources and/or the public and includes, but is not limited to, water purification, flood control, erosion control, shelter, food supply, and reproductive habitats.

State Oil Spill Contingency Plan—the plan required by R.S. 30:2456.

State Trustee(s) or Trustee(s)—the Louisiana Oil Spill Coordinator's Office, the Louisiana Department of Environmental Quality, the Louisiana Department of Natural Resources, and the Louisiana Department of Wildlife and Fisheries, and may include other gubernatorially appointed state agencies whose trust natural resources may be affected.

Unauthorized Discharge of Oil—any actual or threatened discharge of oil not authorized by a federal or state permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

Subchapter B. State Trustee Response, Organization, and Coordination

§111. Notification of an Unauthorized Discharge of Oil

A. The coordinator shall promptly notify all state trustees of all reported unauthorized discharges of oil into coastal waters.

B. After observing the characteristics of the unauthorized discharge of oil and the location of the affected natural resources, if the SOSC determines that the quantity or properties of the oil discharged or the natural resources potentially impacted by the oil differ significantly from the initial report, the SOSC shall promptly provide the state trustees with an updated report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§113. Coordination of Trustee Response to an Unauthorized Discharge of Oil

A. The trustees and the SOSC or his designated representative shall, through the unified incident command system:

1. assist each other in prioritizing protection of natural resources during any unauthorized discharge of oil. The trustees shall be available, throughout the response to the unauthorized discharge of oil, to advise and assist the SOSC regarding the impact of response activities on natural resources;

2. confer on a daily basis in accordance with the National Contingency Plan, Area Contingency Plans, Regional Contingency Plans and the State Oil Spill Contingency Plan;

3. integrate and coordinate response and assessment activities whenever such integration and coordination does not interfere with response activities; and

4. exchange information related to the impact of response activities on natural resources. The SOSC shall provide the trustees with an incident report detailing the quality and effectiveness of the responsible party's containment and removal actions and the protection and preservation of natural resources.

B. The SOSC shall advise the trustees when the impacted area is safely accessible for damage assessment activities. The SOSC shall allow access to the impacted area in accordance with the site safety plan. The SOSC may limit the trustee activities only if such activities would create an unreasonable interference with response actions.

C. The trustees shall conduct natural resource damage assessments by:

1. developing and utilizing contingency planning to enhance coordination among all trustees, emergency response agencies, and responsible parties to ensure a consistent and comprehensive response to unauthorized discharges of oil;

2. coordinating and exchanging scientific, technical, economic and legal expertise among the trustees and responsible party;

3. integrating all scientific, technical, economic, and legal issues;

4. executing, when necessary, contracts to procure the services of appropriate experts;

5. providing the opportunity for early participation in the assessment process by the responsible parties; and

6. informing the Louisiana attorney general of state trustee actions during the assessment process;

7. providing opportunity for public review and comment.

D. The state trustees shall coordinate with the federal trustees in all phases of the damage assessment and restoration process. The state trustees may use the State Oil Spill Contingency Plan, the Area Contingency Plans, and the National Contingency Plan.

E. A single lead administrative trustee shall be designated. Additional duties may be assigned to the lead administrative trustee by agreement of all trustees, but the lead administrative trustee shall:

1. coordinate the natural resources damage assessment and organize communication among the trustees and with the responsible party regarding the assessment. The lead administrative trustee shall perform all administrative tasks required to disseminate information to all participants in the assessment and to ensure that the assessment is completed within the time periods provided by OSPRA, including any extensions granted;

2. prepare and maintain the administrative record as required by §127 of this Chapter; and

3. ensure that disagreements among trustees are expeditiously resolved.

F. If a trustee takes action as a result of a discharge of oil prior to the designation of a lead administrative trustee, that trustee shall document those actions and transmit that documentation to the lead administrative trustee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§115. Responsible Party Participation

A. Pursuant to federal regulations (15 C.F.R. §990 et seq.) and Louisiana R.S. 30:2451 et seq., the trustees are directed to involve the responsible party in natural resource damage assessment as soon as practicable and no later than the delivery of the "Notice of Intent." The trustees shall determine the scope of participation by the responsible party given the willingness of the responsible party to participate, their willingness to fund assessment activities, their willingness and ability to conduct assessment activities and to be bound by the results of jointly agreed-upon studies, the degree of cooperation in response to the incident, and their actions in prior assessments.

1. Responsible parties may assist the trustees in the identification of natural resources most at risk from the unauthorized discharge of oil, and may assist the trustees in identifying protective measures to be used in responding to unauthorized discharges of oil, and in identifying personnel and organizations likely to participate in response and assessment activities, with appropriate quality control.

2. The trustees shall invite the responsible party to participate in the assessment process, the field investigation, the selection of assessment methods, the restoration plan, and post-assessment activities. If the responsible party elects to participate in any part of the assessment process, the trustees

and the responsible party should enter into a written agreement whereby the conditions of their respective participation are defined, including provisions to have a trustee representative present when the responsible party conducts any activity pertinent to a cooperative NRDA process, and whereby they agree to provide data acquired to the trustees as described in Subsection C below. This agreement may be drafted concurrently with the commencement of preassessment activities. The trustees may limit or terminate the participation of the responsible party when such participation is inconsistent with or in conflict with the responsibilities of the trustees.

B. Upon the written request of the responsible party, the trustees shall provide photographs, videos, joint or split samples, and final data used and discovered by the trustees during the natural resource damage assessment and the implementation of the resulting restoration plan. Upon the written request of the trustees, the responsible party shall be required to provide photographs, videos, joint or split samples, and final data used and discovered during the natural resource damage assessment and the implementation of the resulting restoration plan. Conditions for sharing samples and data should be incorporated into the written participation agreement described in Subsection A.2 of this Section.

C. Any assessment conducted with the participation of the responsible party shall include any stipulations agreed upon by the responsible party and the trustees. Stipulations may be proposed by either the responsible party or the trustees at any time during the assessment. The stipulations shall continue, and shall be binding on all parties, after termination of the responsible party's participation or after the termination of a negotiated assessment under section XX.34(e) of these rules. Stipulations must be agreed upon by the trustees.

D. Whenever the trustees agree that the responsible party is interfering with their responsibilities or is causing unreasonable delay in the assessment process, the trustees may proceed without the participation of the responsible party after every effort has been made to resolve problems at the level at which they occur, or if necessary, after a hearing with arbitration has taken place between the responsible party and the coordinator. The trustees shall provide the responsible party with a written statement, which they shall include in the administrative record, describing the factual basis for disallowing further participation by the responsible party. The responsible party may rejoin the assessment process or participate without limitation if the responsible party demonstrates, to the satisfaction of the coordinator, that the dilatory or disruptive practices will not reoccur.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

Subchapter C. Natural Resource Damage Assessments

§117. Field Investigation

A. A field investigation will be conducted to determine whether a natural resource damage assessment is necessary, and if so, the scope of the natural resource damage assessment. The trustees shall initiate a field investigation within 24 hours after approval for access to the site by the SOS.

B. The trustees shall determine the appropriate methods to be used in conducting the preliminary field investigation which may include sampling and data collection. The trustees shall provide an opportunity for the responsible party to participate in all phases of the Natural Resource Damage Assessment process.

C. Information gathered as part of the field investigation, including sampling protocols and data validations, will be part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§119. Criteria to Be Considered in Deciding to Perform an Assessment

A. The trustees may find injury to a natural resource when:

1. the natural resource was directly or indirectly exposed to oil from an unauthorized discharge of oil; and
2. there was a pathway between the natural resource and the unauthorized discharge of oil; and
3. reliable and valid methods indicate adverse effects on natural resources and services resulting from exposure to discharged oil; or
4. the natural resource and/or service was adversely impacted by response activities either to an actual discharge or the substantial threat of an unauthorized discharge of oil.

B. The trustees may find a loss of services when:

1. the ability of the natural resource to provide services has been reduced as the result of an unauthorized discharge of oil or response activities associated with the substantial threat of an unauthorized discharge; or
2. the ability of the natural resource to provide public uses has been reduced as the result of an unauthorized discharge of oil or the substantial threat of an unauthorized discharge of oil.

§121. Assessment Procedures and Protocols for Determining, Quantifying, and Valuing Natural Resource Injury and Loss of Services

A. The coordinator, in consultation with the trustees, shall determine within 60 days of the determination by the on-scene coordinator that the cleanup is complete whether information gathered during the field investigation(s) indicates that a natural resource damage assessment is warranted.

B. The trustees may use any appropriate and accepted assessment procedures and methods as long as they consider the unique characteristics and the location of the natural resources affected by the unauthorized discharge or substantial threat of unauthorized discharge of oil, including adverse impacts caused by response activities, if any. The methods shall be designed to ensure that the cost of any restoration, rehabilitation, replacement, or acquisition project shall not be disproportionate to the value of the natural resource before the injury.

C. Any assessment generated by the trustees must be reasonable and the costs of conducting the assessment must have a rational and direct connection to the value of the injured resources.

D. In addition, the use of a more complex or expensive method must be reasonably related to the expected increase in

the quantity and/or quality of relevant information provided by the more complex procedure.

E. The procedures must be capable of providing information of use in determining the type and scale of restoration appropriate for the injury.

F. The trustees may petition the coordinator for a longer period of time to make the determination by showing that the full impact of the discharge on the affected natural resources cannot be determined in 60 days.

G. Only after a field investigation which may include sampling and data collection, the trustees shall value the injury to natural resources as a result of an unauthorized discharge of oil. The state trustees shall utilize methods that provide appropriate, valid, and reliable resource values for the injuries associated with the unauthorized discharge of oil. In performing an assessment, the trustees must use generally accepted scientific and technical standards and methodologies that have been demonstrated to produce valid and reliable assessment results. Injury determination, restoration planning, and quantification of restoration costs must be based on a site-specific assessment of the unique characteristics and the location of the natural resources.

H. The range of assessment options includes:

1. Comprehensive Assessment Procedures. A method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury and cost-effective restoration alternatives to natural resources resulting from an unauthorized discharge of oil and will be used when the coordinator, in consultation with the trustees, determines that an expedited or negotiated assessment procedure is not appropriate.

2. Expedited Assessment Procedures may be used:

a. when the following circumstances exist:

i. the discharge of oil has caused limited observable mortality; and

ii. the extent of injury can be determined within 12 months following the completion of response actions; and

iii. a restoration plan can be initiated within 12 months of completion of the response actions; or

b. when the quantity of oil discharged is less than 1,000 gallons; or

c. when the coordinator, in consultation with the trustees, determines that the expedited damage assessment method is the most cost-effective, technically feasible method for achieving timely restoration of injured natural resources.

3. Negotiated Assessment Procedures. Any assessment method agreed to by the state trustees and the responsible person.

I. If more than one procedure for providing the same type and quality of information is available, the most cost-effective procedure must be used.

J. The coordinator and the trustees shall complete the comprehensive assessment procedure within 20 months of the date of determination by the SOSOC that cleanup is complete. The trustees may petition the coordinator for a longer period of time to make the determination by showing that the full impact of the discharge on the affected natural resources cannot be determined in 20 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§123. Notice of Intent to Perform an Assessment

A. The coordinator, in consultation with the trustees, shall determine within 60 days of the determination by the on-scene coordinator that the cleanup is complete whether action to restore, rehabilitate, replace, acquire the equivalent of injured natural resources is necessary, and determine which assessment procedure is appropriate. The coordinator may decide that a longer period of time is necessary to make the determinations required above.

B. Under R.S. 30:2480(5)(c), the coordinator and trustees are directed to promote participation of the responsible party in all stages of the assessment. The coordinator and trustees shall inform the responsible party as soon as possible that the trustees are conducting activities associated with an unauthorized discharge of oil. The coordinator, after consultation with the trustees, shall provide the responsible party with a written notice of intent to perform a natural resource damage assessment.

C. The notice of intent to perform an assessment shall include:

1. a summary of the activities conducted during the field investigation and other trustee actions to date; and
2. a description of the unauthorized discharge of oil; and
3. an evaluation of the effect of response activities on natural resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§125. Plans for Restoration, Rehabilitation, Replacement and/or Acquisition of the Equivalent of Injured Natural Resources

A. The coordinator, in consultation with the trustees, shall develop and implement a plan for the restoration, replacement, rehabilitation and/or acquisition or relevant research of the equivalent natural resources.

B. Each restoration plan developed by coordinator shall:

1. include an analysis of alternative restoration plans, including natural recovery;
2. be cost-effective and technically feasible. Technical feasibility means the technology and management skills necessary to implement an assessment plan or restoration plan are known such that each element of the plan has a reasonable chance of successful completion;
3. not have costs disproportionate to the value of the natural resources and the services provided by the resources prior to the unauthorized discharge of oil;
4. allow for corrective actions in the execution of the restoration plan;
5. provide for a period of monitoring sufficient to determine the effectiveness of the plan; and
6. be available for public hearing and comment for a period not to exceed 10 working days prior to initiation of the plan.

C. The restoration plan may be developed simultaneously with other portions of the damage assessment. Restoration plans should be developed as early in the process as practicable and may be developed in phases. Phased restoration plans may be used when trustees determine that:

1. pilot projects are necessary to establish the technical feasibility of the restoration plan;
2. restoration of a particular resource and/or service is not possible without first restoring another resource and/or service upon which the first depends;
3. natural recovery is the chosen alternative for some, but not all, of the injured natural resources; or
4. there is a potential for continuing injury resulting from the unauthorized discharge of oil.

D. The restoration plan may include any combination of:

1. restoration; rehabilitation; replacement and/or acquisition of equivalent natural resources; or
2. natural recovery; or
3. an evaluation of the unique characteristics of the spill, designed to provide information to enhance the trustees' response or restoration capabilities and ensure full compensation for injured natural resources.

E. The trustees shall establish criteria for determining when a restoration plan is completed and shall consider:

1. performance standards and appropriate measures for their achievement;
2. natural changes occurring in reference areas; and
3. the ability of the natural resources to maintain their viability without further human intervention.

F. The trustees shall issue a certificate of completion to the responsible party when no further actions are necessary to achieve the goals of the restoration plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

Subchapter D. Administration

§127. Administrative Record

A. The administrative record shall contain documents relied upon by the trustees in selecting appropriate assessment procedures and protocols and in developing restoration plans. The purpose of the administrative record is to ensure documentation of the trustees' decisions.

B. The administrative record shall be developed and maintained by the lead administrative trustee. All closed administrative records from unauthorized discharges of oil into coastal waters shall be maintained by the coordinator as required by the Louisiana Public Records Act (R.S. 44:1 et seq.).

C. Each administrative record shall contain, at a minimum:

1. all final documents and references to documents used by trustees in selecting assessment procedures and protocols, and in developing restoration plans; and
2. all technical, scientific and economic information discovered and relied upon by the trustees during the assessment; and
3. the Notice of Intent to Perform an Assessment; and
4. the field investigation report and all other information considered in the pre-assessment phase; and

5. a copy of the assessment and the restoration plan as presented to the responsible party; and

6. all correspondence, agreements, and other documents related to the role of the responsible party in the assessment process; and

7. comments received from the public and the trustees' response to those comments.

D. The following documents and data shall not be included in the administrative record:

1. drafts, unless a final document is not produced and the draft document is material to decisions made, pre-decisional, deliberative inter-agency and intra-agency documents shall not be included in the administrative record. 2. documents describing analysis of liability or any attorney-client privileged documents or attorney work product documents also shall not be included.

3. any scientific, technical, or economic data that fails to meet all criteria set forth in a quality assurance/quality control plan developed by the trustees may be included only if there is a scientifically reliable basis for utilizing any of the data.

E. The administrative record is a document subject to the Louisiana Public Records Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§129. Recovery of Damages

A. In an action filed pursuant to the Oil Spill Prevention and Response Act (OSPR), R.S. 30:2480, the trustees may recover those costs which would not have been incurred in the absence of the unauthorized discharge of oil and which are attributable to the performance of the assessment of damages and the development, implementation, and monitoring of the restoration plan, including:

1. the costs of the assessment including, but not limited to:

a. salary, fringe benefits, overhead, release, transportation, lodging, and state per diem costs;

b. the costs of sampling and analyses of oil and natural resources, including reference areas;

c. the costs of laboratories, contractors, and other experts retained by the trustees in assessing injury and determining damages;

d. the cost of the mediation required by §133 of this Chapter (relating to mediation);

2. the costs of restoration, rehabilitation, replacement and/or acquisition of equivalent resources and/or services to hasten recovery to baseline;

3. the costs to diminish further injury to natural resources from the time of the initial discharge until the time of restoration of the injured natural resources and the services they provide;

4. the cost of restoration, rehabilitation, replacement and/or acquisition of equivalent resources and/or services to provide compensation for losses from the time of the initial discharge until the time baseline is achieved;

5. the net loss of taxes, royalties, rents, fees, or net profit share that the state would otherwise have collected in the absence of the unauthorized discharge of oil;

6. all costs that have a rational connection to the assessment and are incurred in the performance of the assessment, and the development, implementation, and monitoring of the restoration plan.

B. The responsible party shall reimburse assessment costs to each state trustee separately.

C. If a responsible party is entitled to a limitation of natural resource damages liability, then any recovery under R.S. 30:2480, shall be limited as provided in R.S. 30:2479.

D. In the event that the responsible party does not reimburse trustees, the state trustees shall be reimbursed from the Oil Spill Contingency Fund pursuant to this Subsection. If the responsible party fails to pay, the Oil Spill Contingency Fund is liable for all natural resource damages assessed as the result of injuries caused by an unauthorized discharge of oil into coastal waters.

1. State Trustee Costs

a. State trustees may recover from the Oil Spill Contingency Fund all costs incurred responding to an unauthorized discharge of oil and in assessing damages resulting from injuries to natural resources caused by an unauthorized discharge of oil into coastal waters.

b. State trustees must submit directly to the coordinator satisfactory proof of costs incurred. Satisfactory proof of costs is compliance with the procedures prescribed by and according to the rules of the comptroller of public accounts of the State of Louisiana. The coordinator will recommend that the comptroller make payment to the state trustees for their assessment costs.

2. In the event the responsible party fails to pay a natural resource damage assessment claim, the state trustees may present the claim to the Oil Spill Contingency Fund for the costs of actions to restore, rehabilitate, replace and/or acquire the equivalent of injured natural resources and for the costs to diminish injuries to natural resources resulting from an unauthorized discharge of oil pursuant to this Subsection.

3. Oil Spill Contingency Fund Liability and Limitation

a. The Oil Spill Contingency Fund is liable when:

- i. the federal fund denies the claim; or
- ii. the amount of the claim paid by the federal fund

is not sufficient to restore, rehabilitate, replace and/or acquire the equivalent of the injured natural resources.

b. If Subparagraph a of this Paragraph applies, then the Oil Spill Contingency Fund shall be liable for further damages for the following:

- i. restoration, rehabilitation, replacement and/or acquisition of the equivalent natural resources; and
- ii. for the diminution of injuries to natural resources for a period of two years from the date the federal fund grants or denies the claim.

4. The coordinator shall diligently seek reimbursement to the Oil Spill Contingency Fund. The coordinator shall seek reimbursement from the responsible parties, the federal fund, and any other person who is liable under OSPRA for all expenditures from the Oil Spill Contingency Fund, when the Oil Spill Contingency Fund has paid a natural resource damage assessment claim. When state trustees have recovered damages from the Oil Spill Contingency Fund, the coordinator

shall be subrogated to all rights or causes of action of the trustees.

E. The trustees shall present the assessment claim to the responsible party via hand delivery or United States Postal Service Return Receipt Requested Certified Mail.

F. Within 60 days of the presentation of an assessment claim by the trustees, the responsible party shall make full payment or initiate restoration, rehabilitation, replacement, or mitigation of damages or relevant research unless the assessment is in dispute and referred to mediation pursuant to R.S. 30:2480(G). In the case of successful mediation, payment of the assessment claim shall be made within 60 days of the completion of the mediation unless otherwise agreed.

G. The coordinator shall ensure that there is no double recovery for natural resource damages resulting from an unauthorized discharge of oil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§131. Settlements

A. A negotiated settlement is a binding agreement in which the responsible party agrees to pay the trustees a certain amount or to perform certain restoration, rehabilitation, replacement, acquisition and/or relevant research activities. The coordinator, in consideration of the responsible party's agreement in writing, will agree to release the responsible party from further liability for damages to natural resources resulting from an unauthorized discharge of oil. Such release shall not be executed until after the payment is received by the trustees or until after the restoration, rehabilitation, replacement, acquisition and/or relevant research project is certified complete by the coordinator. The coordinator, in consultation with the trustees, may consider, compromise, and settle any filed or developing claim on such terms as are fair, reasonable, and in the public interest.

B. The final agreement between the trustees and the responsible party shall be subject to public review and comment as set forth in §135 of this Chapter (relating to public participation) and shall provide:

1. that restoration, replacement, and rehabilitation projects be planned and implemented only by persons approved by the trustees;

2. that title to real or personal property acquired as compensation for injured natural resources may vest in a public entity only where the terms and conditions for that entity's acceptance of title are met;

3. that criteria for certification of project completion are specifically enumerated; and

4. for all items necessary to ensure restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

§133. Mediation

A. No state trustee or responsible party may invoke the jurisdiction of any court over a disputed natural resource

damage assessment claim unless and until the assessment claim has been referred to mediation pursuant to this Section.

B. The mediation process required by R.S. 30:2480(G), shall be conducted pursuant to this Subsection.

1. The coordinator, within 10 days of receipt of the written notice that the responsible party is disputing the assessment claim, shall send written notification to all parties of the referral to mediation.

2. Each side is entitled to one mediator. If the trustees and the responsible party agree on a single person to serve as mediator, then that person shall be the only mediator.

3. Any designated mediator must have completed a minimum of 40 classroom hours of mediation training in a course conducted by an alternative dispute resolution system or other dispute resolution organization. This requirement may be waived for any mediator only with the unanimous consent of all trustees and all responsible parties. A mediator conducting a mediation under this Section shall act as an impartial third party and be subject to the standards and duties set forth.

4. Before appointment of the mediator is final, any prospective mediator shall submit complete disclosure statements for the approval of all parties, which statements shall include a r sum  of experience, together with a declaration describing all past, present, and anticipated future relationships related to the subject matter of the dispute and with all parties and their agents or representatives involved in the dispute.

5. After appointment as a mediator and thereafter throughout the mediation process, the mediator shall not acquire any ownership or any other financial interest in, nor shall be employed by or act as a consultant to, any party to the dispute or the agent or representative of any party to the dispute, and during this period shall not engage in any discussion or make any agreement with any party to the dispute or the agent or representative of any party to the dispute, regarding the acquisition of any ownership or financial interest, employment, or consulting activity after the mediation process is completed. Provided, however, that the parties to the mediation, by unanimous consent, may waive these restrictions specifically, in writing, upon full disclosure of the facts by the mediator.

C. All communications in the mediation shall be confidential and privileged.

D. The mediation shall terminate at the conclusion of the period that the parties agree to mediate, including any agreed extensions, but not less than one full business day, or upon declaration by any mediator of an impasse.

E. The mediation shall be scheduled so as to conclude within 135 days after the responsible party receives the natural resource damage assessment claim.

F. Within three days following the termination or conclusion of a mediation, the mediator(s) shall provide the coordinator with notice of the completion of the mediation process.

G. The mediation shall take place in Baton Rouge, Louisiana, unless the trustees and the responsible party agree otherwise.

H. All participants in the mediation process who represent either a state trustee or a responsible party must be vested with the authority to negotiate a mediated settlement agreement on behalf of their respective trustee or responsible party and to recommend to the trustee or responsible party approval of any mediated settlement agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

 135. Public Participation

A. The trustees shall give public notice through the use of the *Louisiana Register* and at least one newspaper of general circulation serving the impacted area.

B. Under R.S. 30:2480(I), the trustees shall provide for a public hearing and comment period of no more than 10 working days following the issuance of an assessment.

C. The trustees shall not execute any documents which relieve a responsible party from liability for damages resulting from injury to natural resources until the public comment period has expired.

D. When an equivalent resource plan is proposed for adoption by the trustees, the coordinator and the trustees may conduct, upon the request of any member of the public, a public hearing on the proposed plan.

E. The public hearing shall be convened in or near the area covered by the equivalent resource plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 24:

Chapters 3. - 7. Reserved

Interested persons may submit written comments on the proposed rule to Marion Boulden, Oil Spill Coordinator's Office, 1885 Wooddale Boulevard, Twelfth Floor, Baton Rouge, LA 70806, until 5 p.m. on April 25, 1998.

A public hearing will be held on April 29, 1998 at 10 a.m. in the Mineral Board Hearing Room in the Department of Natural Resources Building at 625 North Fourth Street, Baton Rouge, LA 70804. Interested persons are invited to attend and submit oral comments on the proposed rules.

Roland J. Guidry
Oil Spill Coordinator

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Assessment of Natural Resources Damages

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

No costs or savings to state or local governmental units. Costs incurred as a result of a natural resource damage assessment are reimbursable either from the party responsible for the unauthorized oil spill or from the Federal Oil Spill Liability Fund (through the Louisiana Oil Spill Coordinator's Office and the Louisiana Oil Spill Contingency Fund). Natural resource damage assessments currently are conducted under the NOAA (Federal) rule (15 CFR 990), until the Louisiana rule is adopted.

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

No impact on revenue collections of state or local governmental units. The Louisiana Oil Spill Coordinator is already mandated to seek reimbursement for expenditures related to natural resource damage assessment (NRDA) by R.S. 30:2451 et seq. The proposed rule provides a framework and guidance for conducting NRDA's, preserving the rebuttable presumption asserted in the Louisiana Oil Spill Prevention and Response Act (R.S. 30:2451 et seq.).

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

No costs or benefits expected. Under the Oil Pollution Act of 1990, parties responsible for unauthorized releases of oil are already liable for the cost of assessing injury to natural resources, and for the cost of replacing, restoring, or acquiring the equivalent of those injured resources. This rule does not increase or alleviate that liability.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect. The proposed rule does not affect practices relating to hiring or competition. The proposed rule does not affect the ability of any entity to produce and market oil products.

Gus Stacy, III
Deputy Oil Spill Coordinator
9803#034

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Medical Examiners**

Licensing Physicians and
Surgeons (LAC 46:XLV.301-431)

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Medical Examiners (board), pursuant to the authority vested in the board by the Louisiana Medical Practice Act, R.S. 37:1261-1292, intends to amend its rules governing the licensure of physicians and surgeons (LAC 46:XLV.Subpart 2, Chapter 3, §§301-431). The proposed amendments are set forth below.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians and Surgeons

Subchapter A. General Provisions

§301. Scope of Chapter

The rules of this Chapter govern the licensing of physicians and surgeons to engage in the practice of medicine in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1271, R.S. 37:1272 and R.S. 37:1274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908

(November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§303. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified:

Applicant—a person who has applied to the board for a license or permit to engage in the practice of medicine in the state of Louisiana.

Application—a written request directed to and received by the board, upon forms supplied by the board, for a license or permit to practice medicine in the state of Louisiana, together with all information, certificates, documents, and other materials required by the board to be submitted with such forms.

Good Moral Character—as applied to an applicant, means that:

1. the applicant has not, prior to or during the pendency of an application to the board, been guilty of any act, omission, condition, or circumstance which would provide legal cause under R.S. 37:1285 for the suspension or revocation of medical licensure;

2. the applicant has not, prior to or in connection with his application, made any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to a material fact or omits to state any fact or matter that is material to the application; and

3. the applicant has not made any representation, or failed to make a representation, or engaged in any act or omission which is false, deceptive, fraudulent, or misleading in achieving or obtaining any of the qualifications for a license or permit required by this Chapter.

License—the lawful authority of a physician to engage in the practice of medicine in the state of Louisiana, as evidenced by a certificate duly issued by and under the official seal of the board.

Medical Practice Act—R.S. 37:1261-1292, as hereafter amended or supplemented.

Permit—the lawful authority of a physician to engage in the practice of medicine in the state of Louisiana for a designated, temporary period of time, subject to restrictions and conditions specified by the board, as evidenced by a certificate duly issued by and under the official seal of the board. A permit is of determinate, limited duration and implies no right or entitlement to a license or to renewal of the permit.

Physician—a person possessing a doctor of medicine or osteopathy or an equivalent degree duly awarded by a medical or osteopathic educational institution approved by the board pursuant to §§333 to 345 of this Chapter.

State—any state of the United States, the District of Columbia and Puerto Rico.

B. Masculine terms wheresoever used in this Chapter shall also be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1271, R.S. 37:1272 and R.S. 37:1274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

Subchapter B. Graduates of American and Canadian Medical School and Colleges

§309. Scope of Subchapter

The rules of this Subchapter govern the licensing of physicians and osteopaths who are graduates of medical or osteopathic schools and colleges approved by the board located within any state or in Canada.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1271, R.S. 37:1272, R.S. 37:1274 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§311. Qualifications for License to Practice Medicine

A. To be eligible for a license to practice medicine, an applicant shall:

1. be at least 21 years of age;
2. be of good moral character as defined by §303(A);
3. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the commissioner of the Immigration and Naturalization Service of the United States under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the commissioner's regulations thereunder (8 C.F.R.);

4. possess:
 - a. a doctor of medicine or equivalent degree duly issued and conferred by a medical school or college approved by the board; or

- b. a doctor of osteopathy or doctor of osteopathic medicine degree issued and conferred on or after June 1, 1971 by a school or college of osteopathy or osteopathic medicine approved by the board;

5. have completed at least one year of postgraduate clinical training in a medical internship or equivalent program accredited by the American Council on Graduate Medical Education (ACGME) of the American Medical Association, or by the Royal College of Physicians and Surgeons (RCPS) of Canada, and approved by the board; and

6. have, within the prior 10 years, in conformity with the restrictions and limitations prescribed by §381 of these rules, and subject to the exception provided for certain applicants for licensure by reciprocity provided by §353.A, taken and successfully passed:

- a. all three steps of the United States Medical Licensing Examination (USMLE) of the Federation of State Medical Boards of the United States, Inc. (FSMB); or

- b. both components of the Federation Licensing Examination (FLEX) of the FSMB; or

- c. all three parts of the examinations of the National Board of Medical Examiners (NBME); or

- d. Step 1 of the USMLE or Part I of the NBME, Step 2 of the USMLE or Part II of the NBME, and Step 3 of the USMLE or Part III of the NBME; or

- e. Component 1 of the FLEX and Step 3 of the USMLE; or

- f. Step 1 of the USMLE or Part I of the NBME and Step 2 of the USMLE or Part II of the NBME and Component 2 of the FLEX.

B. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by, and to the satisfaction of, the board.

C. A doctor of osteopathy who applies to the board for a license to practice medicine prior to January 1, 1999, will alternatively be deemed eligible for such licensure if the applicant satisfies the requirements for licensure provided by §311.A.1-5 and has taken and successfully passed Steps 1 and 2 of the USMLE and Part 3 of the examination of the National Board of Osteopathic Medical Examiners (NBOME).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1271, R.S. 37:1272, R.S. 37:1274 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:513 (June 1990), LR 24:

§313. Procedural Requirements

In addition to the substantive qualifications specified in §311, to be eligible for a license, an applicant shall satisfy the procedures and requirements for application provided by §§359-365 of this Chapter and, if applicable, the procedures and requirements for examination administered by the board provided by §§371-385 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1271, R.S. 37:1272, R.S. 37:1274 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§315. Waiver of Qualifications

Upon request by an applicant, the board may, in its discretion, waive the qualifications for licensure otherwise required by §311.A.5 or 6, in favor of an applicant who has been formally appointed to a permanent and not time delimited tenured position as full professor or associate professor (but not as a clinical professor or clinical associate professor) by and with a medical school or college within the state of Louisiana approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1271, R.S. 37:1272, R.S. 37:1274 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:514 (June 1990), LR 24:

Subchapter C. International Medical Graduates

§321. Scope of Subchapter; Definition

A. The rules of this Subchapter specify additional qualifications, requirements, and procedures for the licensing of physicians and surgeons who are graduates of foreign medical schools.

B. As used in this Subchapter, the term *International Medical Graduate* or *IMG* means a graduate of a medical school or college not located in any state or in Canada,

recognized and officially listed by the World Health Organization and not affirmatively disapproved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:212 (April 1986), LR 12:528 (August 1986), LR 24:

§323. Qualifications for License

A. To be eligible for a license, an international medical graduate applicant shall:

1. possess all of the substantive qualifications for license specified by §311 of this Chapter;

2. possess a valid Standard ECFMG Certificate issued by the Educational Commission for Foreign Medical Graduates, having successfully passed the United States Medical License Examination (USMLE) in accordance with the standards, restrictions, and limitations prescribed by §§379 and 381 of this Chapter;

3. be competent and proficient in speaking, understanding, reading, and writing the English language; and

4. have completed at least three years of postgraduate clinical training in the United States or in Canada in a medical residency or equivalent program accredited by the American Council on Graduate Medical Education (ACGME) of the American Medical Association, or by the Royal College of Physicians and Surgeons of Canada (RCPS), and approved by the board. To be approved by the board such program must be offered and taken in an institution offering not fewer than two residency or equivalent programs accredited by the ACGME or the RCPS; the program in which the applicant participates must evidence the applicant's progressive responsibility for patient care; and the three years of such a program must be in the same specialty or, alternatively, constitute the IMG, upon completion of such three years program, as eligible for specialty board certification or for postgraduate year four (PGY-4) training.

B. In addition to the qualifications specified in the preceding Subsection, if an IMG applicant has participated in any clinical clerkship program within the United States as part of the academic training requisite to his doctor of medicine degree, such clinical clerkship program shall be subject to approval by the board as a condition of the applicant's eligibility for licensure. Such a clinical clerkship program may be approved by the board only if, at the time the applicant participated in such program, the clinical clerkship program was accredited or approved by the ACGME, the clinical clerkship was served in a hospital or other institution accredited by the Joint Commission on Accreditation of Health Care Organizations, and the applicant's supervising physician within such program held formal appointment as a professor or associate professor of the medical school or college sponsoring such program; provided, however, that notwithstanding a clinical clerkship program's satisfaction of these standards, the board may decline to approve any such program upon a finding that it was not substantially equivalent to the clinical clerkships offered by medical schools and colleges accredited by the Liaison Committee on Medical

Education of the American Medical Association and the Association of American Medical Colleges.

C. The burden of satisfying the board as to the qualifications and eligibility of the IMG applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by, and to the satisfaction of, the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:213 (April 1986), LR 12:528 (August 1986), LR 24:

§325. Procedural Requirements

In addition to the substantive qualifications specified in §323, to be eligible for a license, an IMG applicant shall satisfy the procedures and requirements for application provided by §§359-365 of this Chapter; if applicable, the procedures and requirements for examination administered by the board provided in §§371-391 of this Chapter; and shall provide notarized verification of his medical school transcript, reflecting the courses and hours taken and grades achieved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§327. Waiver of Qualifications

A. The waiver of qualifications provided by §315 of this Chapter shall be available to international medical graduate applicants.

B. Upon request by an applicant, the board may, in its discretion, waive the necessity of successfully passing the ECFMG examination, as otherwise required by §323.A.2, in favor of an applicant who is currently certified by a specialty board recognized by the American Board of Medical Specialties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

Subchapter D. Board Approval of Medical Schools and Colleges

§333. Scope of Subchapter

The rules of this Subchapter provide the method and procedures by which medical schools and colleges and schools or colleges of osteopathy are approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§335. Applicability of Approval

Graduation from an approved school is among the qualifications requisite to medical licensure as provided by

§311.A.4 (American and Canadian graduates), §323.A.1 (international medical graduates), and §353.A (reciprocity applicants). This qualification will be deemed to be satisfied if the school or college from which the applicant graduated was approved by the board as of the date the applicant's degree was issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1272.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§337. Approval of American Schools and Colleges

A. A medical school or college located in any state which is currently accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (LCME/AAMC), or their successors, shall be concurrently considered approved by the board.

B. A school or college of osteopathy located in any state which is currently accredited by the American Osteopathic Association, or its successor, shall be concurrently considered approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§339. Approval of Canadian Schools

A medical school or college located in Canada which is currently accredited by the Royal College of Physicians and Surgeons of Canada, or its successor, shall be concurrently considered approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§341. Recognition of Foreign Medical Schools

To be considered acceptable as evidence of basic medical education, a medical school or college not located in any state or in Canada shall, at a minimum, be recognized and officially listed by the World Health Organization and not affirmatively disapproved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:909 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:213 (April 1986), LR 12:528 (August 1986), LR 16:516 (June 1990), LR 24:

§345. List of Approved Schools

A listing of approved schools and colleges of medicine and osteopathy is set forth in an appendix to this Chapter and shall, from time to time, be amended and supplemented by the board consistently with the provisions of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:910

(November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

Subchapter E. Licensure by Reciprocity

§351. Definition

Licensure by Reciprocity—the issuance of a license to practice medicine on the basis of medical licensure by another state medical licensing authority pursuant to written examination acceptable to the board as specified by §353.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1276.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:910 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:516 (June 1990), LR 24:

§353. Qualifications for Medical Licensure by Reciprocity

A. An applicant who possesses and meets all of the qualifications and requirements specified by §§311 and 313 of this Chapter, save for successfully passing one of the examinations specified by §311.A.6 or C within the prior 10 years, shall nonetheless be eligible for licensing if such applicant possesses, as of the time the application is filed and at the time the board passes upon such application, a current, unrestricted license to practice medicine issued by the medical licensing authority of another state, and the applicant has, within 10 years prior to the date of application, taken and successfully passed:

1. a medical licensing examination developed and administered by the licensing authority of a state in which they hold an unrestricted license to practice medicine; or

2. a written certification or recertification examination administered and leading to certification or recertification by a specialty board recognized by the American Board of Medical Specialties.

B. An applicant who possesses all of the qualifications for licensure by reciprocity specified by Subsection A of this Section, save for having taken and passed a written medical competence examination within 10 years of the date of application, shall nonetheless be considered eligible for licensure by reciprocity if such applicant takes and successfully passes the Special Purpose Examination (SPEX) of the Federation of State Medical Boards of the United States, Inc., as administered by and under the auspices of the board, or a written certification or recertification examination by a specialty board recognized by the American Board of Medical Specialties.

C. An osteopathic physician qualified for medical licensure under §311.A.4.b shall be eligible for medical licensure by reciprocity only if he holds a medical license issued by the medical licensing authority of another state on the basis of successful USMLE, FLEX or National Board of Medical Examiners examination and is otherwise qualified for licensure by reciprocity under this Section. For purposes of medical licensure by reciprocity, the examination of the National Board of Osteopathic Examiners does not qualify as a written medical competence examination acceptable to the Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1276.

HISTORICAL NOTE: Promulgated by the Department of Health

and Human Resources, Board of Medical Examiners, LR 10:910 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 14:149 (March 1988), LR 16:516 (June 1990), LR 24:

Subchapter F. Application

§359. Purpose and Scope

The rules of this Subchapter govern the procedures and requirements applicable to application to the board for licensing as a physician in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1278.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:910 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§361. Application Procedure

A. Application for unrestricted licensing shall be made upon forms supplied by the board.

B. If application is made for licensing subject to successful completion of Step 3 of the United States Medical Licensing Examination (USMLE), an initial application must be received by the board not less than 120 days prior to the scheduled administration of USMLE Step 3 for which the applicant desires to sit (See Subchapter G of this Chapter respecting dates and places of examination). Applications must be completed and all supporting documentation must be received by the board not less than 90 days prior to the scheduled administration of USMLE Step 3 for which the applicant desires to sit.

C. Application for licensing by reciprocity under Subchapter E may be made at any time.

D. Application forms and instructions pertaining thereto may be obtained upon written request directed to the office of the board. Application forms will be mailed by the board within 30 days of the board's receipt of request therefor. To ensure timely filing and completion of application, forms must be requested not later than 40 days prior to the deadlines for initial application specified in the preceding Subsection.

E. An application for licensing under this Chapter shall include:

1. proof, documented in a form satisfactory to the board as specified by the Secretary, that the applicant possesses the qualifications set forth in this Chapter;

2. three recent photographs of the applicant; and

3. such other information and documentation as the board may require to evidence qualification for licensing.

F. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

G. The board may refuse to consider any application which is not complete in every detail, including submission of every document required by the application form. The board may, in its discretion, require a more detailed or complete response to any request for information set forth in the application form as a condition to consideration of an application.

H. Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules.

I. Following submission of a completed application, an applicant shall, upon approval by the board office and by appointment, make a personal appearance before the board, a member of the board, or its designee, as a condition to the board's consideration of such application. At the time of such appearance, the applicant shall present the original of the documents required under this Chapter. The recommendation of the board, board member, or designee as to the applicant's fitness for licensure shall be made a part of the applicant's file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1278.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:910 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:516 (June 1990), LR 24:

§363. Additional Requirements for International Medical Graduates

A. Any diploma or other document required to be submitted to the board by an IMG applicant which is not in the English language must be accompanied by a certified translation thereof into English.

B. In addition to the procedures and requirements set forth in §361, following submission of a completed application, an IMG applicant shall, upon approval by the board office and by appointment, make a personal appearance before a member of the board as a condition to the board's consideration of such application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1278.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:910 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§365. Effect of Application

A. The submission of an application for licensing to the board shall constitute and operate as an authorization by the applicant to each educational institution at which the applicant has matriculated, each state or federal agency to which the applicant has applied for any license, permit certificate or registration, each person, firm, corporation, clinic, office, or institution by whom or with whom the applicant has been employed in the practice of medicine, each physician or other health care practitioner whom the applicant has consulted or seen for diagnosis or treatment and each professional organization or specialty board to which the applicant has applied for membership, to disclose and release to the board any and all information and documentation concerning the applicant which the board deems material to consideration of the application. With respect to any such information or documentation, the submission of an application for licensing to the board shall equally constitute and operate as a consent by the applicant to disclosure and release of such information and documentation and as a waiver by the applicant of any privilege or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. By submission of an application for licensing to the board, an applicant shall be deemed to have given his consent

to submit to physical or mental examinations if, when, and in the manner so directed by the board and to waive all objections as to the admissibility or disclosure of findings, reports or recommendations pertaining thereto on the grounds of privileges provided by law. The expense of any such examination shall be borne by the applicant.

C. The submission of an application for licensing to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose and release any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations, or governmental entities pursuant to Subsections A or B of this Section to any person, firm, corporation, association, or governmental entity having a lawful, legitimate, and reasonable need therefor including, without limitation, the medical or osteopathic licensing authority of any state; the Federation of State Medical Boards of the United States; the American Medical Association and any component state and county or parish medical society, including the Louisiana State Medical Society and component parish societies thereof; the American Osteopathic Association; the Louisiana Osteopathic Medical Association; the Federal Drug Enforcement Agency; the Louisiana Office of Narcotics and Dangerous Drugs, Division of Licensing and Registration, Department of Health and Hospitals; federal, state, county, or parish and municipal health and law enforcement agencies and the Armed Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1278.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:911 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:517 (June 1990), LR 24:

Subchapter G. Examination

§371. Designation of Examinations

Examinations recognized by the board pursuant to R.S. 37:1272(5) as qualifying for a license to practice medicine include the United States Medical Licensing Examination (USMLE) of the Federation of State Medical Boards of the United States, Inc. (FSMB); the Federation Licensing Examination (FLEX) of the FSMB and the examinations of the National Board of Medical Examiners (NBME). Application for taking Step 3 of the USMLE is made to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:911 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§373. Subversion of Examination Process

A. An applicant-examinee who engages or attempts to engage in conduct which subverts or undermines the integrity of the examination process shall be subject to the sanctions specified in §385 of this Chapter.

B. Conduct which subverts or undermines the integrity of the examination process shall be deemed to include:

1. refusing or failing to fully and promptly comply with any rules, procedures, instructions, directions, or requests made or prescribed by the chief proctor or an assistant proctor;
2. removing from the examination room or rooms any of the examination materials;
3. reproducing or reconstructing, by copying, duplication, written notes, or electronic recording, any portion of the licensing examination;
4. selling, distributing, buying, receiving, obtaining, or having unauthorized possession of a future, current, or previously administered licensing examination;
5. communicating in any manner with any other examinee or any other person during the administration of the examination;
6. copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the examination;
7. having in one's possession during the administration of the examination any materials or objects other than the examination materials distributed including, without limitation, any books, notes, recording devices, or other written, printed, or recorded materials or data of any kind;
8. impersonating an examinee by appearing for and as an applicant and taking the examination for, as and in the name of an applicant other than himself;
9. permitting another person to appear for and take the examination on one's behalf and in one's name; or
10. engaging in any conduct which disrupts the examination or the taking thereof by other examinees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:911 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§375. Finding of Subversion

When the board has probable cause to believe that an applicant has engaged or attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board shall so advise the applicant, in writing, setting forth the grounds for its finding of probable cause, specifying the sanctions which are mandated or permitted for such conduct by §377 of this Subchapter and provide the applicant with an opportunity for hearing pursuant to R.S. 49:955-58 and applicable rules of the board governing administrative hearings. Unless waived by the applicant, the board's findings of fact, its conclusions of law under these rules, and its decision as to the sanctions, if any, to be imposed shall be made, in writing, and served upon the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:912 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§377. Sanctions for Subversion of Examination

A. An applicant who is found by the board, prior to the administration of the examination, to have engaged in conduct

or to have attempted to engage in conduct which subverts or undermines the integrity of the examination process may be permanently disqualified from taking the examination and for medical licensure in the state of Louisiana.

B. An applicant-examinee who is found by the board to have engaged or to have attempted to engage in conduct which subverts or undermines the integrity of the examination process shall be deemed to have failed the examination. Such failure shall be recorded in the official records of the board.

C. In addition to the sanctions permitted or mandated by Subsections A and B of this Section, as to an applicant-examinee found by the board to have engaged or to have attempted to engage in conduct which subverts or undermines the integrity of the examining process, the board may:

1. revoke, suspend, or impose probationary conditions on any license or permit issued to such applicant;
2. disqualify the applicant, permanently or for a specified period of time, from eligibility for licensure in the state of Louisiana; or
3. disqualify the applicant, permanently or for a specified number of subsequent administrations of the examination, from eligibility for examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:912 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§379. Passing Scores

A. An applicant will be deemed to have successfully passed Step 3 of the USMLE examination if he attains a score of at least 75 in such examination.

B. An applicant for licensure on the basis of FLEX examination will be deemed to have successfully passed the FLEX examination if he attained a score of at least 75 in each component of the examination, or, having taken the FLEX when a weighted average was calculated and reported thereon, had attained a FLEX weighted average of at least 75.

C. A person who is required to and does take the SPEX examination will be deemed to have successfully passed the examination if he attains a score of at least 75.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:912 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:519 (June 1990), LR 24:

§381. Restrictions, Limitations on Examinations

An applicant who has failed to attain a passing score upon taking Step 2 or Step 3 of the USMLE more than three times, or who has failed to attain a passing score upon taking part 2 or part 3 of the NBME more than three times each, or who has failed to attain a passing score upon taking any component of the FLEX more than three times, or who has failed to attain a passing score upon taking Step 2 or Step 3 of the examination of the National Board of Osteopathic Medical Examiners more than three times, shall thereafter be deemed ineligible for licensing. The limitation stated herein with respect to the

taking of the USMLE shall be applicable when such examination is taken as a component of obtaining a Standard ECFMG Certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:912 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:519 (June 1990), LR 24:

§383. Examination in or for Another State

A. Upon application to the board, an applicant for licensing under this Chapter may be permitted to take Step 3 of the USMLE in another state. The score attained by such applicant on such examination will be accepted by the board as if the applicant had taken the USMLE pursuant to application to the board provided that the examination is administered and taken consistently with the restrictions and limitations prescribed by §381 of this Subchapter.

B. A USMLE score attained by an applicant in a USMLE examination administered prior to the applicant's application to the board for licensing will be accepted by the board, provided that:

1. the applicant presents or causes to be presented to the board written certification of the date and place that the USMLE was taken and the score achieved;
2. the examination was administered and taken consistently with the rules, regulations, restrictions, and limitations prescribed by §381 of this Subchapter and by the medical licensing authority of the state for which the examination was taken; and
3. the applicant provides the board with a satisfactory written explanation of the applicant's failure to obtain licensing in the state in which the examination was taken.

C. Upon application to the board and payment of the fee prescribed in Chapter 1 of these rules, an individual applying for licensure in another state may sit for the USMLE examination administered by the board in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:912 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:519 (June 1990), LR 24:

§385. Lost, Stolen, or Destroyed Examinations

The submission of an application for examination shall constitute and operate as an acknowledgment and agreement by the applicant that the liability of the board, its members, employees, and agents, and the State of Louisiana to the applicant for the loss, theft, or destruction of all or any portion of an examination taken by the applicant, prior to the reporting of scores thereon by the National Board of Medical Examiners, other than by intentional act, shall be limited exclusively to the refund of the fees paid for examination by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:912 (November 1984), amended by the Department of Health and

Hospitals, Board of Medical Examiners, LR 16:520 (June 1990), LR 24:

§387-395. [Reserved]

Subchapter H. Restricted Licensure, Permits

§397. Restricted Licensure in General

A. With respect to applicants who do not meet or possess all of the qualifications and requirements for licensing, the board may, in its discretion, issue such restricted licenses as are, in its judgment, necessary or appropriate to its responsibilities under law. Restricted licenses shall be designated and known as permits.

B. A temporary permit entitles the holder to engage in the practice of medicine in the state of Louisiana only for the period of time specified by such permit and creates no right or entitlement to licensing or renewal of the permit after its expiration.

C. An institutional permit entitles the holder to engage in the practice of medicine only at, in, and in association with the medical institution, clinic, or location specified by such permit or within a specified medical training program.

D. A permit issued by the board may be either temporary or institutional, or both. Other permits may be issued by the board upon such terms, conditions, limitations, or restrictions as to time, place, nature, and scope of practice, as are, in the judgment of the board, deemed necessary or appropriate to the particular circumstances of individual applicants or physicians.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1285 and R.S. 37:1275.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:913 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§399. Types of Permits

The types of permits which the board may consider issuing, as enumerated in the following sections of this Subchapter, shall not be construed to provide any right or entitlement whatsoever to the described permit, issuance of which shall be determined in the absolute discretion of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1285 and R.S. 37:1275.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:913 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

§401. Provisional Temporary Permit Pending Application for Visa

A. The board may issue a provisional temporary permit to an applicant for any license or permit provided for by these rules who is otherwise completely qualified for such license or permit, save for possessing an H-1 or equivalent visa as may be required by these rules, provided that the applicant has completed all applicable requirements and procedures for issuance of a license or permit and is eligible for an H-1 or equivalent visa under rules and regulations promulgated by the United States Immigration and Naturalization Service (INS).

B. A provisional temporary permit issued under this Section shall be of the same type and scope, and subject to the same terms and restrictions, as the license or permit applied for, provided, however, that a provisional temporary permit

issued under this Section shall expire, and become null and void, on the earlier of:

1. 90 days from the date of issuance of such permit;
2. 10 days following the date on which the applicant receives notice of INS action granting or denying the applicant's petition for an H-1 or equivalent visa; or
3. the date on which the board gives notice to the applicant of its final action granting or denying issuance of the license or permit applied for.

C. The board may, in its discretion, extend or renew, for one or more additional 90-day periods, a provisional temporary permit issued hereunder which has expired pursuant to Subsection B.1 of this Section, in favor of an applicant who holds a provisional temporary permit issued under this Section and who has filed a petition for H-1 or equivalent visa with the INS, but whose pending petition has not yet been acted on by the INS within 90 days from issuance of such provisional temporary permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1275.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1101 (November 1991), amended LR 24:

§403. Visiting Physician Permits

A. The board may issue a Visiting Physician temporary permit to an applicant physician or surgeon who is invited by one or more physicians licensed under this Chapter to participate or consult in diagnosis or treatment of a patient under care in a Louisiana medical institution, provided that such invited physician:

1. possesses the qualifications for licensing prescribed by §311.A.1-4;
2. within a reasonable time prior to the intended consultation or treatment, presents or causes to be presented to the board:

- a. indisputable personal identification;
- b. verification satisfactory to the board that the applicant holds a current unrestricted license to practice medicine issued by the medical licensing authority of another state or, if an alien, holds an unrestricted license or other legal authorization to engage in the practice of medicine in his domicile country; and
- c. written recommendations by two physicians licensed under this Chapter attesting to the professional qualifications of the visiting physician and assuming responsibility for his professional activities and patient care; and

3. satisfies the application and processing fee prescribed in Chapter 1 of these rules.

B. The board may issue a visiting professor temporary permit to an applicant physician or surgeon who is invited by an accredited medical school or college within the state of Louisiana approved by the board to serve on the faculty of the school or college, provided that such invited professor:

1. possesses the qualifications for licensing prescribed by §311.A.1-4;
2. presents or causes to be presented to the board:
 - a. indisputable personal identification;
 - b. a completed application on forms furnished by the board; and

c. verification satisfactory to the board that the applicant holds a current unrestricted license to practice medicine issued by the medical licensing authority of another state; and

3. satisfies the application and processing fee prescribed in Chapter 1 of these rules.

C. The board may issue a foreign exchange visiting professor temporary permit to an applicant physician or surgeon who is invited by an accredited medical school or college within the state of Louisiana approved by the board to participate in an exchange of faculty between the applicant's medical school or college and the Louisiana medical school or college, provided that such invited foreign exchange professor:

1. possesses the qualifications for licensing prescribed by §311.A.1-4;

2. presents or causes to be presented to the board:

a. indisputable personal identification;

b. an H-1 or equivalent visa;

c. a completed application on forms furnished by the board; and

d. verification satisfactory to the board that the applicant holds a current unrestricted license to engage in the practice of medicine in his domicile country; and

3. satisfies the application and processing fee prescribed in Chapter 1 of these rules.

D. A temporary permit issued under Subsection A of this Section may be restricted by the board to permit a specific act in consultation and/or to restrict consultation or treatment to a designated patient. Temporary permits issued under Subsections B and C of this Section are limited to a term of 12 months from the date of issuance.

E. A temporary permit issued under this Section shall expire, and thereby become null, void, and to no effect on the date specified by such permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1285 and R.S. 37:1275.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:913 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:520 (June 1990), LR 24:

§405. Short-Term Residency Permit

A. The board may issue an institutional temporary permit to an applicant who is a commissioned physician of the Armed Services of the United States for the purpose of receiving postgraduate clinical training in a medical program approved by the board and conducted by a Louisiana medical school or college, provided that such physician:

1. possesses the qualifications for licensing prescribed by §311.A.1-4;

2. possesses a current unrestricted license to practice medicine or osteopathy in, and duly issued by the medical or osteopathic licensing authority of any state, or has successfully passed either the USMLE examination, the FLEX examination, the examination of the National Board of Medical Examiners, or the NBOME examination;

3. will participate in such postdoctoral medical training program pursuant to and within the course and scope of his

orders and duties as a commissioned officer of the Armed Services;

4. within a reasonable time prior to the commencement of such training program, presents or causes to be presented to the board:

a. satisfactory documentation that he possesses the qualifications required by this Section, including a certified copy of his military orders authorizing and directing his participation in the specified medical training program; and

b. written certification by the dean of the medical school or college in which the applicant is to receive such training that the applicant has been accepted for participation in such program subject to the issuance of a permit by the board; and

5. satisfies the application and processing fees prescribed in Chapter 1 of these rules.

B. The board may, in its discretion, issue a temporary permit for the purpose of serving a preceptorship or participating in a short-term residency program to an applicant who possesses the qualifications for licensure prescribed by §311.A.1-4 and who possesses a current unrestricted license to practice medicine in, and duly issued by, any state; provided that:

1. the preceptorship or residency program is approved by the board;

2. the applicant presents, or causes to be presented, to the board:

a. a completed application for a short-term residency permit upon the form provided by the board, together with the fee prescribed by Chapter 1 of these rules;

b. satisfactory documentation that the applicant possesses the qualifications required by this Section;

c. written certification of current unrestricted licensure by the state in which the applicant resides at the time of the application; and

d. a letter from the physician under whom he will be serving the preceptorship or short-term residency, describing the capacity in which the applicant will be serving and the inclusive dates of such service; and

3. the applicant appears in person before and presents to a member of the board his original doctor of medicine degree and original certificate of state medical licensure.

C. The holder of a permit issued under this Section shall not engage in the practice of medicine in any respect in the state of Louisiana or receive medical educational training other than within the postdoctoral medical educational program, preceptorship, or short-term residency program for which he is approved by the board.

D. A temporary permit issued under this Section shall expire, and thereby become null and void and to no effect on the date specified by such permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1285 and R.S. 37:1275.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:913 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:521 (June 1990), LR 24:

§407. Permit Pending Examination Results

A. The board may issue an institutional temporary permit for the sole purpose of serving in an approved medical residency training program to a graduate of an American or Canadian medical school or college or school of osteopathic medicine who has taken Step 3 of the USMLE but whose scores have not yet been reported to the board or who is scheduled to take Step 3 of the USMLE at its next administration, to be effective pending the reporting of such scores to the board, provided that the applicant possesses and meets all of the qualifications and requirements for licensure provided by this Chapter save for having successfully passed the USMLE (§311.A.5), and provided further that the applicant has not previously taken and failed to achieve a passing score on the USMLE, any component thereof, or any written examination administered by the licensing authority of any state.

B. The board may issue a temporary permit to an applicant for licensure by reciprocity (§§351-353) who is required by §353.B to take the SPEX or a specialty board certification or recertification examination, but who has not yet taken such examination or whose scores have not yet been reported to the board, provided that the applicant possesses and meets all of the qualifications and requirements for licensure provided by this Chapter save for having successfully passed such an examination (§353.B), and provided further that the applicant has registered for the next available administration of such an examination which shall be given not more than six months following submission of application for reciprocity licensure, and the applicant has not previously taken and failed to achieve a passing score on the SPEX or a specialty board certification or recertification examination.

C. A permit issued under this Section shall expire, and thereby become null, void and to no effect on that date that:

1. the board gives written notice to the permit holder that he has failed to achieve a passing score on the SPEX, or the permit holder receives notice that he has failed to achieve a passing score on a specialty board certification or recertification examination;

2. the board gives written notice to the permit holder pursuant to §383.C that it has probable cause to believe that he has engaged or attempted to engage in conduct which subverted or undermined the integrity of the examination process;

3. the permit holder is issued a license pursuant to §413 or another type of permit as provided by §§397- 405 of this Chapter; or

4. the holder of a permit issued under Subsection B fails to appear for and take the SPEX or specialty board certification or recertification examination for which he is registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1272 and R.S. 37:1273.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:914 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:521 (June 1990), LR 24:

§411. Graduate Education Temporary Permit

A. In General. The board may issue a Graduate Education Temporary Permit (GETP) to an international medical graduate (a graduate of a medical school located outside of the United States, Canada, and Puerto Rico) for the purpose of enrolling and participating in an accredited program of postgraduate medical education (residency or fellowship) at a Louisiana medical school, college, or other accredited medical institution, upon documentation of the qualifications, satisfaction of the procedural requirements, and compliance with the conditions and limitations prescribed by this Section.

B. Qualifications for Permit. To be eligible for a GETP, an international medical graduate (IMG) shall:

1. be at least 21 years of age;

2. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the commissioner of the Immigration and Naturalization Service (INS) of the United States pursuant to the Immigration and Nationality Act and the commissioner's regulations thereunder, as evidenced by an exchange visitor (J-1), temporary worker (H-1B) or immigrant visa, or INS-issued or approved work permit or by a pending application for such visa or permit;

3. be of good moral character, as defined by §303.A.3;

4. possess a doctor of medicine or equivalent degree duly issued and conferred by a medical school or college listed, at the time the degree was awarded, in the then-current edition of the World Directory of Medical Schools published by the World Health Organization;

5. possess the Standard Certificate of the Educational Commission for Foreign Medical Graduates (ECFMG), provided it was issued on the basis of examination taken in accordance with the standards, restrictions, and limitations prescribed by §381 of these rules; and

6. have received a written commitment from an accredited Louisiana medical school, college, or other accredited medical institution formally appointing the IMG to a postgraduate medical education training program which is conducted by such medical school, college, or other medical institution and which is fully accredited by (and not on probational status with) the American Council for Graduate Medical Education (ACGME), subject only to the board's issuance of a GETP to the applicant; and agreeing to furnish to the board the periodic reports required by Subsection F.2 and 3 of this Section.

C. Procedural Requirements. An application form will be supplied by the board only after the qualifications prescribed by Subsection B.6 of this Section have been documented by an original letter, signed by the director of the postgraduate training program of the Louisiana medical school, college, or other accredited medical institution at which the IMG will train, certifying that the qualifications and conditions of such Subsection have been met.

D. Restrictions and Limitations. An IMG holding a Graduate Education Temporary Permit issued by the board shall not participate in postgraduate medical training or

engage in the practice of medicine within the state of Louisiana other than as follows.

1. During the 12 months following the effective date of an initial GETP, an IMG may participate in postgraduate medical training and engage in the practice of medicine solely at the principal location of the sponsoring medical school, college, or medical institution and shall not participate in clinical rotations to or serve at institutions at any other location.

2. An IMG who is enrolled and participating in a first postgraduate year (PGY-1) medical education training program shall not assume independent responsibility for patient care or otherwise engage in the practice of medicine.

3. An IMG shall not engage in the practice of medicine, or participate in any postgraduate medical training program within the state of Louisiana, other than within the scope of the postgraduate medical training program for which such person has been approved by the board, nor other than at the medical school, college, or other accredited medical institution from which such IMG holds his or her appointment, or at medical facilities affiliated with such program.

4. An IMG holding a GETP shall be subject to supervision by the supervising physicians designated by the medical school, college, or medical institution at which the postgraduate medical education training program is conducted.

E. Term of Permit. Each GETP issued under this Section shall expire as of the expiration of 12 months from the date on which it is issued. A GETP shall also expire, and automatically become null and void, effective on any date that the permittee's appointment to the designated postgraduate training program is terminated.

F. Renewal, Reissuance. A GETP which has expired may be renewed or reissued by the board for a successive 12-month period, provided that:

1. not later than 24 months following the effective date of an initial GETP, the permit holder has taken and successfully passed Step 3 of the United States Medical Licensing Examination (USMLE) or had previously passed the FLEX;

2. not less than five months nor more than seven months following the effective date of an initial GETP, the director of the postgraduate program in which the permit holder is enrolled has submitted to the board written reports on the IMG's performance in such program, certifying to the board that the permit holder has performed successfully and competently in such postgraduate program;

3. not less than two months prior to the annual expiration of a GETP, the director of the postgraduate program in which the permit holder is enrolled has submitted to the board written reports on the IMG's performance in such program, certifying to the board that:

a. the permit holder has performed successfully and competently in such postgraduate program;

b. the medical school, college, or other medical institution will renew the IMG's appointment for an additional year; and

c. no grounds are known which would provide cause for the board to refuse to renew or to revoke the permit holder's GETP pursuant to Subsection H hereof.

G. Causes for Refusal to Issue or Renew. Notwithstanding an IMG's eligibility for a GETP, or for renewal of a GETP, under the standards and criteria set forth in this Section, the board may nonetheless deny issuance or renewal of a GETP for any of the causes for which it may deny licensure under R.S. 37:1285(A) or for which it may revoke a GETP pursuant to Subsection H of this Section.

H. Causes for Revocation. Upon prior notice and an opportunity to be heard in accordance with the Louisiana Administrative Procedure Act, a GETP may be revoked by the board:

1. for any of the causes specified by R.S. 37:1285(A);

2. upon a finding by the board that the permittee has failed to maintain, or did not possess at the time of application, any of the qualifications requisite to eligibility for a GETP as prescribed by this Section; or

3. upon a finding by the board that the permittee has exceeded the scope of authority accorded by the GETP or otherwise violated any of the conditions, restrictions, and limitations prescribed by Subsection D hereof.

I. Effect of Revocation. An IMG whose GETP has been revoked by the board pursuant to Subsection H of this Section shall not thereafter be eligible for a GETP or license to practice medicine in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A), 37:1270(B)(6), and 37:1275.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 21:467 (May 1995), amended LR 24:

Subchapter I. License Issuance, Termination, Renewal, Reinstatement

§413. Issuance of License

A. If the qualifications, requirements and procedures prescribed or incorporated by §§311, 313, 323-325 or 353 are met to the satisfaction of the board, the board shall issue to the applicant a license to engage in the practice of medicine in the state of Louisiana.

B. A license issued under §311 of this Chapter shall be issued by the board within 30 days following the reporting of the applicant's USMLE scores to the board. A license issued under any other section of this Chapter shall be issued by the board within 15 days following the meeting of the board next following the date on which the applicant's application, evidencing all requisite qualifications, is completed in every respect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:914 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:523 (June 1990), LR 24:

§415. Expiration of Licenses and Permits

A. Every license or permit issued by the board under this Chapter, the expiration date of which is not stated thereon or provided by these rules, shall expire, and hereby become null,

void, and to no effect, on the last day of the year in which such license or permit was issued.

B. The timely submission of a properly completed application for renewal of a license, but not a permit, as provided by §417 of this Chapter, shall operate to continue the expiring licensing in full force and effect pending issuance of the renewal license.

C. Permits are not subject to renewal, except as expressly provided in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1280.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:914 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:523 (June 1990), LR 24:

§417. Renewal of License

A. Every license issued by the board under this Chapter shall be renewed annually on or before its date of expiration by submitting to the board a properly completed application for renewal, upon forms supplied by the board, together with the renewal fee prescribed in Chapter 1 of these rules.

B. An application for renewal of license form shall be mailed by the board to each person holding a license issued under this Chapter on or before the first day of December of each year. Such form shall be mailed to the most recent address of each licensee as reflected in the official records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1280 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:914 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:523 (June 1990), LR 24:

§418. Reduced Renewal Fees for Certain Physicians

A. The fee otherwise required for annual renewal of licensure will be reduced by one-half in favor of a physician who holds an unrestricted license to practice medicine issued by the board and who has, prior to the first day of the year for which such renewal will be effective:

1. attained the age of 70 years;
2. voluntarily surrendered to the issuing authorities his or her state license and federal registration to prescribe, dispense, or administer controlled substances; and

3. made application to the board for such reduced licensure renewal fee, upon a form supplied by the board, verifying the conditions requisite to such reduced fee and consenting to revocation of any license renewed pursuant to this Section upon a finding by the board that the licensee, following issuance of licensure renewal pursuant to this Section, continued to hold, obtained, or sought to obtain state licensure or federal registration to prescribe, dispense or administer controlled substances.

B. The fee otherwise required for annual renewal of licensure will be reduced by one-half in favor of a physician who holds an unrestricted license to practice medicine or osteopathy issued by the board and who has, prior to the first day of the year for which such renewal will be effective:

1. ceased to engage in the practice of medicine in any form in this state as a consequence of physical or mental disability;

2. voluntarily surrendered to the issuing authorities his or her state license and federal registration to prescribe, dispense, or administer controlled substances; and

3. made application to the board for such reduced licensure renewal fee, upon a form supplied by the board, verifying the conditions requisite to such reduced fee, including independent physician verification of the applicant's physical or mental disability, and consenting to revocation of any license renewed pursuant to this Section upon a finding by the board that the licensee, following issuance of licensure renewal pursuant to this Section, engaged or sought to engage in any manner in the practice of medicine in this state or continued to hold, obtained, or sought to obtain state licensure or federal registration to prescribe, dispense or administer controlled substances.

C. A physician whose medical license is renewed pursuant to this Section shall not thereafter engage or seek to engage in the active practice of medicine in this state or to prescribe, dispense, or administer controlled substances or other prescription medications except upon prior application to and approval by the board, which, in its discretion, as a condition to reinstatement of full licensure, may require that:

1. that the physician take and successfully pass all or a designated portion of the USMLE or SPEX examination; and/or

2. that the physician provide medical documentation satisfactory to the board that the physician is then physically and mentally capable of practicing medicine with reasonable skill and safety to patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1280 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:523 (June 1990), amended LR 24:

§419. Reinstatement of Expired License

A. A license which has expired may be reinstated by the board subject to the conditions and procedures hereinafter provided, provided that application for reinstatement is made within four years of the date of expiration. A physician whose license has lapsed and expired for a period in excess of four years or who is otherwise ineligible for reinstatement under this Section may apply to the board for an initial original or reciprocal license pursuant to the applicable rules of this Chapter.

B. With respect to an application for reinstatement made more than one year from the date on which the license expired, as a condition of reinstatement, the board may require:

1. that the applicant complete a statistical affidavit, upon a form supplied by the board, and provide the board with a recent photograph;

2. that the applicant possess a current, unrestricted license issued by another state; and/or

3. if the applicant does not, at the time of the application, possess a current, unrestricted license issued by

another state, that the applicant take and successfully pass all or a designated portion of the USMLE or SPEX examination.

C. An applicant whose medical license has been revoked, suspended, or placed on probation by the licensing authority of another state or who has voluntarily or involuntarily surrendered his medical license in consideration of the dismissal or discontinuance of pending or threatened administrative or criminal charges, following the date on which his Louisiana medical license expired, shall be deemed ineligible for reinstatement of licensure.

D. An application for reinstatement of licensure meeting the requirements and conditions of this Section may nonetheless be denied for any of the causes for which an application for original licensure may be refused by the board as specified in R.S. 37:1285.

E. An application for reinstatement shall be made upon forms supplied by the board and accompanied by two letters of character recommendation from reputable physicians of the former licensee's last professional location, together with the applicable renewal fee plus a penalty computed as follows.

1. If the application for reinstatement is made less than two years from the date of license expiration, the penalty shall be equal to the renewal fee.

2. If the application for reinstatement is made more than two years but less than three years from the date of license expiration, the penalty shall be equal to twice the renewal fee.

3. If the application for reinstatement is made more than three years from the date of license expiration, the penalty shall be equal to three times the renewal fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:914 (November 1984), amended LR 14:86 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:524 (June 1990), LR 24:

Subchapter J. Postgraduate Education Registration

§425. Necessity for Registration

A. No person who does not possess a license or permit issued under this Chapter shall enroll or participate in any program of postgraduate medical education, unless he is duly registered with the board pursuant to this Subchapter.

B. Notwithstanding registration under this Subchapter, no person who does not possess a license or permit issued under this Chapter shall enroll or participate in any postgraduate medical educational program, howsoever designated or whenever taken, which permits or requires such person to exercise independent medical judgment, assume independent responsibility for patient care, or otherwise to engage in the practice of medicine.

C. Upon a finding that a person or registrant has violated the proscriptions of this Section, the board may:

1. suspend or revoke such person's registration under this Subchapter or impose probationary conditions thereon;

2. consider and declare such person or registrant ineligible for a medical license or permit under this Chapter; or

3. cause institution of judicial proceedings against such person for injunctive relief, costs, and attorneys fees, pursuant to R.S. 37:1286.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:914 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:524 (June 1990), LR 24:

§427. Qualifications for Registration

A. To be eligible for registration under this Subchapter, an applicant shall possess all of the substantive qualifications for licensure specified by §311.A.1-4 and shall be a graduate of an approved American or Canadian medical school or college or school of osteopathic medicine.

B. The burden of satisfying the board as to the qualifications and eligibility of the applicant for registration shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by, and to the satisfaction of, the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:915 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:524 (June 1990), LR 24:

§429. Procedural Requirements

A. In addition to the substantive qualifications specified in §427, to be eligible for registration under this Subchapter, an applicant shall:

1. submit to the board a completed application, upon forms supplied by the board, subscribed by the applicant and by the administrator or chief executive officer of the hospital or medical institution in which the postgraduate program is to be conducted, accompanied by a recent photograph of the applicant;

2. make a personal appearance, by appointment, before a member of the board or its designee, or at the office of the board before its designated officer, and present evidence of the qualifications specified by §427; provided, however, that an applicant who has completed his medical or osteopathic education but who does not yet possess a degree as required by §311.A.4 may be deemed eligible for registration upon submission to the board of a letter subscribed by the dean of an approved medical school or college or of an approved school or college of osteopathy, certifying that the applicant has completed his academic medical or osteopathic education at such school or college, that the applicant is a candidate for the degree of doctor of medicine or doctor of osteopathy at the next scheduled convocation of such school or college, and specifying the date on which such degree will be awarded; and

3. pay the applicable registration fee, as provided in Chapter 1 of these rules.

B. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:915 (November 1984), amended by the Department of Health and

Hospitals, Board of Medical Examiners, LR 16:525 (June 1990), LR 24:

§431. Issuance and Term of Registration

A. If the qualifications, requirements, and procedures prescribed or incorporated by §§429-431 are met to the satisfaction of the board, the board shall issue a certificate to the applicant evidencing his registration under this Subchapter for enrollment and participation in a program of postgraduate medical education in the state of Louisiana.

B. Registration issued under this Subchapter shall be effective on and as of the date on which an applicant's postgraduate medical education program is to commence.

C. A certificate of registration shall expire, and become null and void, on the earliest of the following dates:

1. one year (12 months) from the effective date of registration, if the registrant has not, prior to such date:

a. submitted documentation to the board of the registrant's successful passage of Steps 1 and 2 of the USMLE in conformity with the requirements and limitations of §§379 and 381 of this Chapter;

b. and the registrant's qualification for and appointment to the postgraduate year 2 (PGY-2) level of the registrant's postgraduate medical education program; and

c. paid the applicable registration renewal fee, as provided in Chapter 1 of these rules;

2. the date of the administration of Step 3 of the next USMLE preceding the expiration of 24 months from the effective date of registration, if the registrant has failed to sit for such administration;

3. the date on which the National Board of Medical Examiners reports to the board that the registrant has failed to attain a passing score on the next USMLE examination preceding the expiration of 24 months from the effective date of the registration; or

4. the date on which the registrant is issued a license to practice medicine in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:915 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:

Inquiries concerning the proposed amendments may be directed, in writing, to Delmar Rorison, Executive Director, State Board of Medical Examiners, at the address set forth below.

Interested persons may submit data, views, arguments, information, or comments on the proposed rule amendments, in writing, to the Board of Medical Examiners, Box 30250, New Orleans, LA 70190-0250 (630 Camp Street, New Orleans, LA 70130). Written comments must be submitted to and received by the board within 60 days of the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made, in writing, and received by the board within 20 days of the date of this notice.

Delmar Rorison
Executive Director

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

RULE TITLE: Licensing Physicians and Surgeons

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

It is not anticipated that the proposed rule amendments will result in costs or savings to the Board of Medical Examiners or any 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 material effect on the revenue collections of the Board of Medical Examiners or of any state or local governmental unit.

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

It is not anticipated that the proposed rule amendments will result in any costs and/or economic benefits to directly affected persons, including applicants for medical licensure, licensed physicians, or governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendments are not anticipated to have any impact on competition and employment in either the public or private sector.

Delmar Rorison
Executive Director
9803#048

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Medical Examiners**

Physician Assistants; Licensing and Practice
(LAC 46:XLV.1501-1519; 4501-4515)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:1270(B)(6) and 37:1360.23(D) and (F), and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend its rules governing the licensure and practice of physician assistants, LAC 46:XLV, Subpart 2, Chapter 15, §§1501-1519, Subpart 3, Chapter 45, §§4501-4515, to conform such rules to the statutory law providing for the licensing and regulation of practice of physician assistants, as amended by Acts 1997, Number 316, R.S. 37:1360.21-1360.38. The proposed amendments are set forth below.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part XLV. Medical Profession
Subpart 2. Licensing and Certification
Chapter 15. Physician Assistants
§1501. Scope of Chapter**

These rules govern the licensure of physician assistants in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 24:

§1503. Definitions

As used in this Chapter, the following terms shall have the meanings specified:

Advisory Committee—the Louisiana State Board of Medical Examiners Physician Assistants Advisory Committee constituted under R.S. 37:1270.1.

Applicant—a person on whose behalf the board has received an application for licensure as a physician assistant.

Approved Application—all of the information, representations, terms, restrictions, and documents contained in or submitted with an application upon which the board has issued a physician assistant license.

Board—the Louisiana State Board of Medical Examiners.

Locum Tenens Physician—a qualified physician who will assume the obligations and responsibilities of the supervising physician when the supervising physician is absent or unavailable as a result of illness, medical emergency or other causes.

Physician—a person possessing a current license to practice medicine in the state of Louisiana.

Physician Assistant—a person possessing a current physician assistant license issued under this Chapter.

Physician Assistant—Certified (PA-C)—a physician assistant who is currently certified by the National Commission on Certification of Physicians' Assistants (NCCPA) or its successors.

Supervising Group of Physicians or Supervising Group—a professional partnership, professional corporation, or other professional, physician-owned entity approved by and registered with the board under this Chapter to supervise one or more physician assistants.

Supervising Physician—a person approved by and registered with the board under this Chapter to supervise a physician assistant.

Supervision—responsible direction and control, with the supervising physician assuming legal liability for the services rendered by the physician assistant in the course and scope of the physician assistant's employment. Such supervision shall not be construed in every case to require the physical presence of the supervising physician. However, the supervising physician and physician assistant must have the capability to be in contact with each other by either telephone or other telecommunications device. Supervision shall exist when the supervising physician responsible for the patients gives informed concurrence of the actions of the physician assistant, whether given prior to or after the action, and then a medical treatment plan or action is made in accordance with written clinical practice guidelines or protocols set forth by the supervising physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 24:

§1505. Necessity for License

A. No person may act as or undertake to perform the functions of a physician assistant unless he has in his personal possession a current physician assistant license issued to him under this Chapter.

B. Any person who acts or undertakes to perform the functions of a physician assistant without a current physician assistant license issued under this Chapter shall be deemed to be engaging in the practice of medicine; provided, however, that none of the provisions of this Chapter shall apply to:

1. any person employed by, and acting under the supervision and direction of, any commissioned physician or surgeon of the United States Armed Services, or Public Health Services, practicing in the discharge of his official duties;

2. practitioners of allied health fields, duly licensed, certified, or registered under other laws of this state, when practicing within the scope of such license, certificate or registration;

3. any physician assistant student enrolled in a physician assistant educational program accredited by the Committee on Allied Health Education and Accreditation or its successor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 24:

§1507. Qualifications for Licensure

A. To be eligible for licensure under this Chapter, an applicant shall:

1. be at least 20 years of age;

2. be of good moral character;

3. demonstrate his competence to provide patient services under the supervision and direction of a supervising physician by:

a. presenting to the board a valid diploma certifying that the applicant is a graduate of a physician assistant training program accredited by the Committee on Allied Health Education and Accreditation (CAHEA), or its successors, and by presenting or causing to be presented to the board satisfactory evidence that the applicant has successfully passed the national certification examination administered by the National Commission on Certification of Physicians' Assistants (NCCPA) or its successors, together with satisfactory documentation of current certification; or

b. presenting to the board a valid, current physician assistant license, certificate or permit issued by any other state of the United States; provided, however, that the board is satisfied that the certificate, license or permit presented was issued upon qualifications and other requirements substantially equivalent to the qualifications and other requirements set forth in this Chapter;

4. certify that he is mentally and physically able to engage in practice as a physician assistant;

5. not, as of the date of application or the date on which it is considered by the board, be subject to discipline, revocation, suspension, or probation of certification or licensure in any jurisdiction for cause resulting from the applicant's practice as a physician assistant; provided, however, that this qualification may be waived by the board in its sole discretion.

B. The burden of satisfying the board as to the eligibility of the applicant for licensure shall be upon the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 24:

§1508. Qualifications for Registration as Supervising Physician

A. To be eligible for approval and registration under this Chapter, a proposed supervising physician shall, as of the date of the application, hold an unrestricted license to practice medicine in the state of Louisiana; and

1. have been in the active practice of medicine for not less than five years following the date on which the physician was awarded a doctor of medicine or doctor of osteopathy degree; or

2. have been in active practice for at least two years following the completion of any postgraduate medical residency program; or

3. hold current certification by a member board of the American Board of Medical Specialties or hold current status as a Candidate for Certification, as defined by such boards, having completed all required education and credentials approval and having passed the qualifying examination therefor, with such status being confirmed in writing by an American specialty board.

B. The burden of satisfying the board as to the eligibility of the proposed supervising physician for approval and registration shall be upon the proposed supervising physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(b)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:202 (March 1996), LR 24:

§1509. Application for Licensure; Procedure

A. Application for licensure as a physician assistant must be made upon forms supplied by the board and must include:

1. proof, documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in §1507 of this Chapter;

2. an affidavit, notarized and properly executed by the applicant, certifying the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;

3. payment of a fee of \$155 of which the sum of \$20 will represent a nonrefundable processing fee; and

4. such other information and documentation as the board may require.

B. A personal interview of a physician assistant applicant by a member of the board or its designee may be required by the board, as a condition of licensure, with respect to:

1. an initial application for licensure where discrepancies exist in the application; or

2. an applicant who has been the subject of prior adverse licensure, certification or registration action in any jurisdiction.

C. All documents required to be submitted to the board must be the original or certified copy thereof. For good cause shown, the board may waive or modify this requirement.

D. The board may reject or refuse to consider any application which is not complete in every detail, including submission of every document required by the application form. The board may in its discretion require a more detailed or complete response to any request for information set forth in the application form as a condition to consideration of an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:110 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1103 (November 1991), LR 22:202 (March 1996), LR 24:

§1510. Application for Registration as Supervising Physician; Procedure

A. Application for approval and registration as a supervising physician must be made upon forms supplied by the board and must include:

1. a detailed description of the proposed supervising physician's professional background and specialty, if any; the nature and scope of his medical practice; the geographic and demographic characteristics of his medical practice; the address or location of the primary office where the physician assistant is to practice and be supervised;

2. a description of the way in which the physician assistant will be utilized as a physician assistant, and the methods to be used by the proposed supervising physician to insure responsible direction and control of the activities of the physician assistant;

3. a statement that the physician will exercise supervision over the physician assistant in accordance with any rules and regulations adopted by the board and that the physician will retain professional and legal responsibility for the care rendered by the physician assistant;

4. an affidavit, notarized and properly executed by the proposed supervising physician, certifying the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;

5. payment of a one-time fee of \$75, of which the sum of \$20 will represent a nonrefundable processing fee; and

6. such other information and documentation as the board may require.

B. A physician seeking to supervise a physician assistant shall be required to appear before the board upon his notification to the board of his intention to supervise a physician assistant:

1. upon a first notification to the board of the physician's intention to supervise a physician's assistant if the board finds discrepancies in the physician's application; or

2. if the physician has been the subject of prior adverse licensure, certification or registration action in any jurisdiction.

C. All documents required to be submitted to the board must be the original or certified copy thereof. For good cause shown, the board may waive or modify this requirement.

D. The board may reject or refuse to consider any application which is not complete in every detail, including submission of every document required by the application form. The board may in its discretion require a more detailed or complete response to any request for information set forth in the application form as a condition to consideration of an application.

E. Any physician seeking to supervise a physician assistant as either primary supervising physician or as locum tenens must register with the board as provided herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:202 (March 1996), LR 24:

§1511. Physician Assistant Advisory Committee

A. The advisory committee shall be authorized to advise the board on all matters specifically dealing with licensing or disciplining of physician assistants or the drafting and promulgating of regulations relating to physician assistants. The advisory committee shall also review and make recommendations to the board on applications for licensure as physician assistants. The board shall not act on any matter relating to physician assistants without first consulting with the advisory committee.

B. The advisory committee shall meet not less than twice each calendar year, or more frequently as may be deemed necessary or appropriate by its chairman or a majority of the members of the advisory committee, which meetings shall be at the call of and at such time and place as may be noticed by its chairman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:110 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1103 (November 1991), LR 22:203 (March 1996), LR 24:

§1513. Issuance of License; Working Permit

A. If the qualifications, requirements and procedures of §§1507 and 1509 are met to the satisfaction of the board, the board shall license the applicant as a physician assistant.

B. The board may grant a working permit (temporary license), valid and effective for one year but renewable for one additional year, to an applicant who otherwise meets the qualifications for licensure, except that the applicant has not yet taken or is awaiting the results of the national certification examination.

C. A working permit shall expire and become null and void on the date on which:

1. the results of the applicant's national certifying

examination are available, and the applicant has failed to pass such examination; or

2. the board takes final action on the applicant's application for licensure.

D. Every license or permit issued under this Chapter is expressly subject to the terms, restrictions and limitations set forth in the approved application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:110 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1103 (November 1991), LR 22:203 (March 1996), LR 24:

§1514. Issuance of Approval as Supervising Physician

A. If all the qualifications, requirements and procedures of §§1508 and 1510 are met to the satisfaction of the board, the board shall approve and register a physician as a supervising physician.

B. Although a physician must notify the board each time the physician intends to undertake the supervision of a physician assistant, registration with the board is only required once. Notification of supervision of a new physician assistant by a registered supervising physician shall be deemed given to the board upon the physician assistant's filing with the board a notice of intent to practice in accordance with §1517 of this Chapter. The board shall maintain a list of physicians who are registered to supervise physician assistants. Each registered physician is responsible for updating the board should any of the information required and submitted in accordance with §§1508 and 1510 change after the physician has become registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:203 (March 1996), amended LR 24:

§1515. Consent to Examination; Waiver of Privileges; Examining Committee of Physicians

A. An applicant or physician assistant shall, by applying for or accepting licensure under this Chapter, be deemed to have given his consent to submit to physical or mental examinations when so directed by the board and to waive all objections as to the disclosure or admissibility of findings, reports, or recommendations pertaining thereto on the grounds of privileged communication or other personal privileges provided by law.

B. The board may appoint or designate an examining committee of physicians, possessing appropriate qualifications, to conduct physical and mental examinations of a physician assistant, to otherwise inquire into the physician assistant's fitness and ability to provide services with reasonable skill and safety to patients, and to submit advisory reports and recommendations to the board, when the board has reasonable cause to believe that the fitness and ability of such physician assistant are affected by mental illness or deficiency or physical illness including, but not limited to, deterioration through the aging process or the loss of motor skills, and/or excessive use or abuse of drugs, including alcohol.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1104 (November 1991), LR 22:203 (March 1996), LR 24:

§1517. Expiration of Licensure; Renewals; Modification; Notification of Intent to Practice

A. Initial licensure shall expire as of the last day of the year in which such license was issued.

B. Every license issued under this Chapter shall be renewed annually on or before January 1 by submitting to the board an application for renewal upon forms supplied by the board, together with satisfactory documentation of current certification or recertification by the National Commission on Certification of Physicians' Assistants. Each application for renewal shall be accompanied by a fee of \$100.

C. A physician assistant licensed in this state, prior to initiating practice, shall submit, on forms approved by the board, notification of such intent to practice. Such notification shall include:

1. the name, business address, and telephone number of the supervising physician or supervising group of physicians and any designated locum tenens; and

2. the name, business address, and telephone number of the physician assistant.

D. Licensure shall not terminate upon termination of a relationship between a physician assistant and a supervising physician provided that:

1. the physician assistant ceases to practice as a physician assistant until such time as he enters into a supervision relationship with a supervising physician or supervising group of physicians registered with the board; and

2. the physician assistant notifies the board of any changes in or additions to his supervising physicians within 15 days of the date of such change or addition.

E. The board may, in its discretion, at the time of and upon application for renewal of licensure, require a review of the current accuracy of the information provided in the approved application and of the physician assistant's performance thereunder and may modify or restrict any licensure in accordance with the findings of such review.

F. A physician assistant may elect to have his license placed on inactive status by the board by giving notice to the board, in writing, on forms prescribed by the board, of his election of inactive status. A physician assistant whose license is on inactive status shall be excused from payment of renewal fees and shall not practice as a physician assistant in the state of Louisiana. Any licensee who engages in practice while his or her license is on inactive status shall be deemed to be engaged in practice without a license and shall be subject to administrative sanction under R.S. 37:1360.34 or to judicial injunction pursuant to R.S. 37:1360.37. A physician assistant on inactive status may be reinstated to active status upon payment of the current renewal fees and satisfaction of other applicable qualifications for renewal prescribed by §1517.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B) (6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1104 (November 1991), LR 22:203 (March 1996), LR 24:

Subpart 3. Practice

Chapter 45. Physician Assistants

§4501. Supervision by Supervising Group of Physicians

A. A physician assistant may be supervised by a supervising group of physicians provided that, a member, partner or employee of the supervising group is designated as the supervising physician, and such supervising physician meets and satisfies all of the qualifications, procedures and other requirements of this Chapter to the same extent as if the physician assistant were supervised individually by the supervising physician.

B. With respect to any physician assistant supervised by a supervising group of physicians, all duties, obligations, and responsibilities imposed by statute or by the rules of this Chapter on the supervising physician shall be equally and independently assumed and borne by the designated supervising physician and the supervising group.

C. When a physician assistant is supervised by a supervising group of physicians, the supervising physician may designate any other member, partner or employee of the supervising group as locum tenens physician, provided that such designee meets the qualifications of LAC 46:XLV.1508 and 1510 and the designation otherwise complies with said Sections. Any physician serving as a locum tenens physician must be identified in the physician assistant's notice of intent to practice as provided in §1517.

D. A physician may obtain approval from the board to be the primary supervising physician for up to two physician assistants; however, nothing shall prohibit a qualified supervising physician from acting as supervising physician on a locum tenens basis for any physician assistants in addition to the two physician assistants for whom he is the primary supervising physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1105 (November 1991), LR 22:204 (March 1996), LR 24:

§4503. Compensation

A. A physician assistant may receive compensation, salary or wages only from his or her employer and may neither render a statement for service directly to any patient nor receive any payment, compensation or fee for services directly from any patient.

B. Nothing in this Section shall prohibit charges from being submitted to any governmental or private payor for services rendered by a physician assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1105 (November 1991), LR 22:204 (March 1996), LR 24:

§4505. Services Performed by Physician Assistants

A. The practice of a physician assistant shall include the performance of medical services that are delegated by the supervising physician and are within the scope of the physician assistant's education, training, and licensure.

B. Medical services rendered by a physician assistant may include: screening patients to determine need for medical attention; eliciting patient histories; reviewing patient records to determine health status; performing physical examinations; recording pertinent patient data; performing developmental screening examinations on children; making preliminary decisions regarding data gathering and appropriate management and treatment of patients being seen for initial evaluation of a problem or follow-up evaluation of a previously diagnosed and stabilized condition; making appropriate referrals; preparing patient summaries; requesting initial laboratory studies; collecting specimens for blood, urine and stool analyses; performing urine analyses, blood counts and other laboratory procedures; identifying normal and abnormal findings on history, physical examinations and laboratory studies; initiating appropriate evaluation and emergency management for emergency situations such as cardiac arrest, respiratory distress, burns and hemorrhage; performing clinical procedures such as venipuncture, intradermal testing, electrocardiography, care and suturing of wounds and lacerations, casting and splinting, control of external hemorrhage, application of dressings and bandages, administration of medications, intravenous fluids, and transfusion of blood or blood components, removal of superficial foreign bodies, cardio-pulmonary resuscitation, audiometry screening, visual screening, aseptic and isolation techniques; providing counseling and instruction regarding common patient problems; monitoring the effectiveness of therapeutic intervention; assisting in surgery; and signing for receipt of medical supplies or devices that are delivered to the supervising physician or supervising physician group. This list is illustrative only, and by no means constitutes the limits or parameters of the physician assistant's practice.

C. A physician assistant who performs the suturing of lacerations, may undertake to do so with respect to a particular patient, only when specifically delegated to do so by the supervising physician.

D. A physician assistant may administer medication to a patient, or transmit orally, electronically, or in writing on a patient's record, a prescription from his or her supervising physician to a person who may lawfully furnish such medication or medical device. The supervising physician's prescription, transmitted by the physician assistant, for any patient cared for by the physician assistant, shall be based on a patient-specific order by the supervising physician. At the direction and under the supervision of the supervising physician, a physician assistant may hand to a patient of the supervising physician a properly labeled prescription drug prepackaged by a physician, a manufacturer or a pharmacist. In any case, the medical record of any patient cared for by the physician assistant for whom the physician's prescription has been transmitted or carried out shall be reviewed, countersigned and dated by a supervising physician within 72 hours, or as otherwise required by law.

E. A physician assistant shall not:

1. practice without supervision, as defined by §1503, except in life-threatening emergencies;

2. issue prescriptions for any medication and/or complete and issue prescription blanks previously signed by any physician;

3. order for administration or administer any medication to any patient except pursuant to the specific order or direction of his or her supervising physician;

4. act as or engage in the functions of a physician assistant other than on the direction and under the direction and supervision of his supervising physician at the location or locations specified in physician assistant's notice of practice location to the board, except in the following situations:

a. if the physician assistant is acting as assistant in life-threatening emergencies and in situations such as man-made and natural disaster or a physician emergency relief efforts;

b. if the physician assistant is volunteering his services to a non-profit charitable organization, receives no compensation for such services, and is performing such services under the supervision and in the presence of a licensed physician;

5. act as or engage in the functions of a physician assistant when the supervising physician and the physician assistant do not have the capability to be in contact with each other by telephone or other telecommunication device; or

6. identify himself, or permit any other person to identify him, as "doctor" or render any service to a patient unless the physician assistant has clearly identified himself as a physician assistant by any method reasonably calculated to advise the patient that the physician assistant is not a licensed physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1105 (November 1991), LR 22:204 (March 1996), LR 24:

§4507. Authority and Limitations of Supervising Physician

A. The supervising physician is responsible for the responsible supervision, control, and direction of the physician assistant and retains responsibility to the patient for the competence and performance of the physician assistant.

B. A supervising physician may not supervise more than two physician assistants at the same time; provided, however, that a physician may be approved to act as a supervising physician on a locum tenens basis for physician assistants in addition to the physician assistants for whom he or she is the primary supervising physician, provided that such physician shall not act as supervising physician for more than four physician assistants at any one time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:112 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:205 (March 1996), LR 24:

§4509. Designation of Locum Tenens

A. Notwithstanding other provisions of this Chapter, the board may permit a supervising physician to designate as locum tenens a physician who will assume the obligations and responsibilities of the supervising physician when the supervising physician is absent or unavailable as a result of illness, medical emergency or other causes.

B. To be eligible for designation as locum tenens, a physician shall:

1. meet the qualifications of LAC 46:XLV.1508;
2. actively practice in the same specialty as the supervising physician or in a reasonably related field of medicine; and
3. be registered as a supervising physician as provided in LAC 46:XLV.1510 and 1514.

C. Designation of a locum tenens must include:

1. a description of the locum tenens' professional background and specialty, if any;
2. the address of all office locations used by the locum tenens;
3. a detailed description of the specific circumstances under which the locum tenens will act for and in place of the supervising physician and the manner in which the locum tenens will supervise, direct and control the physician assistant; and
4. a certificate, signed by the designated locum tenens, acknowledging that he has read and understands the rules of this Chapter and that he will assume the duties, obligations and responsibilities of the supervising physician under the circumstances specified in the application.

D. The board may, in its discretion, refuse to approve the use of a locum tenens, or it may restrict or otherwise modify the specified circumstances under which the locum tenens would be authorized to act for and in place of the supervising physician.

E. A physician assistant shall not, while acting under the direction and supervision of an approved locum tenens designated by the supervising physician, attend or otherwise provide any services for or with respect to any patient other than a patient of the supervising physician or supervising group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:112 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1106 (November 1991), LR 22:205 (March 1996) LR 24:

§4511. Mutual Obligations and Responsibilities

A. The physician assistant and supervising physician shall:

1. within 15 days notify the board, in writing, of:
 - a. the termination of the physician assistant's supervision relationship with a supervising physician or supervising group of physicians;
 - b. the retirement or withdrawal from active practice by the supervising physician; and
 - c. any other change in the employment, functions, activities or services of the physician assistant or the manner or location of their performance;
2. comply with reasonable requests by the board for

personal appearances and/or information relative to the functions, activities and performance of the physician assistant and supervising physician;

3. insure that each individual to whom the physician assistant provides patient services is expressly advised and understands that the physician assistant is not a licensed physician;

4. insure that, with respect to each direct patient encounter, all activities, functions, services and treatment measures of the physician assistant are properly documented in written form by the physician assistant and that each such entry is countersigned by the supervising physician within 24 hours with respect to inpatients in an acute care setting and patients in a hospital emergency department; within 48 hours with respect to patients of nursing homes and other sub-acute settings and within 72 hours in all other cases.

B. The physician assistant and supervising physician shall bear equal and mutual responsibility for producing the following documentation upon an official inspection conducted by a duly authorized representative of the board:

1. a copy of the physician assistant's notice of intent to practice, listing all physicians authorized and designated to supervise the physician assistant; and
2. any written practice agreement defining the scope of practice of the physician assistant including:
 - a. any clinical practice guidelines prescribed by the supervising physician;
 - b. the medical procedures which the supervising physician has authorized the physician assistant to perform;
 - c. any group practice arrangements; and
 - d. a list of the locations where the physician assistant may be working at any given time;
3. any written practice agreement shall be annually reviewed, updated as appropriate, and signed by the physician assistant and supervising physician.

C. The physician assistant and the supervising physician shall bear equal and reciprocal obligations to insure strict compliance with the obligations, responsibilities and provisions set forth in the rules of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:112 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1106 (November 1991), LR 22:206 (March 1996), LR 24:

§4513. Causes for Nonissuance, Suspension, Revocation of Restrictions; Fines, Reinstatement

A. The board may refuse to issue, or may suspend, revoke or impose probationary or other restrictions on, any license issued under this Chapter, or issue a private or public reprimand, for the following causes:

1. conviction of or entry of a plea of guilty or nolo contendere to a criminal charge constituting a felony under the laws of the United States or of any state;
2. conviction of or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or in connection with practice as a physician assistant;
3. fraud, deceit, or perjury in obtaining any license or permit issued under this Chapter;

4. providing false testimony before the board;
5. habitual or recurring drunkenness;
6. habitual or recurring use of morphine, opium, cocaine, drugs having a similar effect, or other substances which may induce physiological or psychological dependence;
7. aiding, abetting, or assisting any physician in any act or course of conduct enumerated in Louisiana Revised Statutes, Title 37, Section 1285;
8. efforts to deceive or defraud the public;
9. incompetency;
10. immoral conduct in exercising the privileges provided for by licensure under this Chapter;
11. persistent violation of federal or state laws relative to control of social diseases;
12. interdiction or commitment by due process of law;
13. inability to perform or function as a physician assistant with reasonable skill or safety to patients because of medical illness or deficiency; physical illness, including but not limited to deterioration through the aging process or loss of motor skills; and/or excessive use or abuse of drugs, including alcohol;
14. refusing to submit to the examination and inquiry of an examining committee of physicians appointed or designated by the board to inquire into the physician assistant's physical and mental fitness and ability to provide patient services with reasonable skill and safety;
15. the refusal of the licensing authority of another state to issue or renew a license, permit or certificate to act as a physician assistant in that state, or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by such licensing authority which prevents or restricts the functions, activities or services of the physician assistant in that state; or
16. violation of any provision of this Chapter, or of rules or regulations of the board or statute pertaining to physician assistants.

B. The board may, as a probationary condition, or as a condition of the reinstatement of any license suspended or revoked hereunder, require the physician assistant and/or the supervising physician group to pay all costs of the board proceedings, including investigators', stenographers', and attorneys' fees, and to pay a fine not to exceed the sum of \$5,000.

C. Any license suspended, revoked or otherwise restricted by the board may be reinstated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:112 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1107 (November 1991), LR 22:206 (March 1996), LR 24:

Inquiries concerning the proposed rule amendments may be directed in writing to Delmar Rorison, Executive Director, Board of Medical Examiners, at the address set forth below.

Interested persons may submit data, views, arguments, information or comments on the proposed rule amendments, in writing to the Board of Medical Examiners, Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans,

LA, 70130). Written comments must be submitted to and received by the board within 60 days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Delmar Rorison
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Physician Assistants; Licensing and Practice**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is not anticipated that the proposed rule amendments will result in costs or savings to the Board of Medical Examiners or any 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 material effect on the revenue collections of the Board of Medical Examiners or of any state or local governmental unit.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
It is not anticipated that the proposed rule amendments will result in any costs and/or material economic benefits to directly affected persons, including applicants for physician assistant licensure, supervising physicians, or governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule amendments are not anticipated to have any material impact on competition and employment in either the public or private sector. In implementing statutory amendments permitting employment of physician assistants by health care provider entities other than physician-owned groups, the rule amendments may, to an extent that is not quantifiable, serve to increase competition in the market for employment of physician assistants.

Delmar Rorison
Executive Director
9803#050

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

Non-notarized Complaints, Mobile
Clinic, and Preceptorship Program
(LAC 46:LXXXV.106, 700, 711 and 1103)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.106, 700, 711, and 1103 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendment to §106 provides a method by

which the board may handle non-notarized information it receives concerning possible violations of the Veterinary Practice Act and rules promulgated thereto. Revised Statute 37:1518(A)(4) empowers the board to conduct investigations for the purpose of discovering violations of the Act; this rule provides more detail on how such investigations may proceed when based on non-notarized information, as opposed to a notarized complaint that is called for under §101(E). The proposed amendments to §§700 and 711 define and establish minimum standards for a mobile clinic, and a mobile practice vehicle is differentiated from a mobile clinic. The proposed revision to §1103 states, in effect, that the change from a five-week preceptorship program to an eight-week preceptorship program shall not apply to students graduating in calendar years prior to 2000.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 1. Operations of the Board of Veterinary Medicine

§106. Complaint Resolution and Disciplinary Procedures

A. ...

B. Appointing a Complaint Review Committee

1. - 2. ...

3. The complaint review committee chair may initiate a preliminary investigation based on non-notarized information received by the board office when, in the chair's judgment, such an investigation may be necessary to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine or against the illegal practice of veterinary medicine. The complaint review committee chair may consult with the other complaint review committee members at any point after the non-notarized information is received. If the preliminary investigation reveals that there is a basis for the allegations, then a formal written complaint shall be filed and the complaint review committee shall proceed with its normal investigation procedures as described in this Section. Without the filing of a formal written complaint, no disciplinary action shall be taken.

4. The appointed members of the complaint review committee shall remain anonymous.

C. - D.2. ...

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 19:345 (March 1993), amended LR 23:967 (August 1997), LR 24:

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.

Mobile Practice Vehicle—a vehicle used by a veterinarian in a house call or farm call type veterinary practice where the animal is not actually taken into the vehicle.

* * *

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 19:1328 (October 1993), amended LR 20:1381 (December 1994), LR 24:

§711. Definitions for Classification of Practice Facilities

A. - B. ...

C. A *mobile clinic* as defined in §700 shall have a permanent base of operations with a published address, telephone facilities for making appointments or responding to emergencies, and the following.

1. A veterinarian operating or working in a mobile clinic must have a written agreement with a local veterinary hospital or clinic to provide hospitalization, surgery, or radiology if these services are not available at the mobile clinic. *Local* means within a 30-mile radius.

2. A veterinarian operating or working in a mobile clinic must have a written agreement with a local veterinary hospital or clinic to provide emergency services and must display a notice to that effect in public view. The phone number and address for this emergency service provider must be provided to each patron of the mobile clinic. *Local* means within a 30-mile radius.

3. A veterinarian operating or working in a mobile clinic must remain on site until all patients are discharged to their owners and must maintain autonomy for all medical decisions made.

4. A physical examination and history must be taken for each patient at a mobile clinic and the medical records for such patients must meet the requirements for recordkeeping in §701. These records must be maintained by the veterinarian for five years and must remain accessible to the client for that period.

5. The veterinarian operating or working in a mobile clinic is responsible for consultation with clients and referral of patients when disease is detected or suspected. The veterinarian is also responsible for information and recommendations given to the client by the mobile clinic's staff.

6. The veterinarian operating or working in a mobile clinic must have his current Louisiana veterinary license on display to the clients.

7. Operation of the veterinary medical mobile clinic requires the following:

a. a clean, safe location;

b. the mobile clinic must meet local sanitation regulations;

c. lined waste receptacles;

d. fresh, running water for cleaning and first aid;

e. examination areas with good lighting and smooth, easily disinfected surfaces;

f. examination and surgery preparation areas separate from surgery area;

g. drugs must be kept according to federal, state, and local laws. If controlled drugs are kept on the premises, they must be kept in a locking, secure cabinet for storage and an accurate controlled substance log must be maintained and available for inspection;

- h. all equipment must be kept clean and in working order;
- i. the mobile clinic must have the capability to deal with sudden emergencies and should have oxygen, resuscitation drugs and equipment, treatment for "shock," and fluid administration materials readily available;
- j. the mobile clinic must have all biomedical waste properly disposed of and must have documentation to prove that fact on the premises for inspection.

D.1. - 2. ...

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 19:1331 (October 1993), amended LR 23:969 (August 1997), LR 24:

Chapter 11. Preceptorship Program
§1103. Definitions

* * *

Preceptorship Program—a preceptorship program approved by the Louisiana Board of Veterinary Medicine which involves no less than five nor more than 10 weeks.

1. - 4. ...

5. Changes in the program that are effective on or after May 1, 1998, shall not apply to students graduating in calendar years prior to 2000.

* * *

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 16:232 (March 1990), amended LR 19:208 (February 1993), LR 23:968 (August 1997), LR 24:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on April 28, 1998.

If it becomes necessary to convene a public hearing in accordance with the Administrative Procedure Act, the hearing will be held on April 28, 1998, at 9 a.m. at the office of the Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA.

Charles B. Mann
 Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Non-notarized Complaints, Mobile Clinic
and Preceptorship Program

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendments (estimated \$340). The veterinary profession will be informed of this proposed rule change via the board's regular newsletter, which is already a budgeted cost of 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. There will be no revenue impact as no increase in fees will result from these amendments.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups; however, costs may be incurred by persons who would be expected to comply with the changes relating to mobile clinics (§§700 and 711). Such costs would be expected to be minimal.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 There is no anticipated effect on employment and competition.

Charles B. Mann
 Executive Director
 9803#012

Richard W. England
 Assistant to the
 Legislative Fiscal Officer

NOTICE OF INTENT

Department of Insurance
Office of the Commissioner

Regulation 64—Vehicle Mechanical
Breakdown Insurers Cancellation Provisions

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and as authorized by R.S. 22:3 and R.S. 22:1811, notice is hereby given that the commissioner of Insurance intends to adopt the following regulation to implement standards for the cancellation of Vehicle Mechanical Breakdown (VMB) contracts. The purpose of the regulation is to protect the interests of policyholders and to promote consumer awareness.

Proposed Regulation 64
Cancellation Provisions for Vehicle
Mechanical Breakdown Insurers

Section 1. Purpose

The purpose of this regulation is to implement standard cancellation requirements in all vehicle mechanical breakdown contracts, and to ensure that all such contracts (hereafter sometimes referred to as "policies") issued, delivered or used in Louisiana are drafted in a more consistent and streamlined manner.

Section 2. Authority

This regulation is promulgated under the authority granted the commissioner by R.S. 22:1811, R.S. 22:3 and R.S. 49:950 et seq.

Section 3. Applicability and Scope

This regulation shall apply to all vehicle mechanical breakdown contracts that are in force and to insurers issuing, for delivery or use, vehicle mechanical breakdown contracts in Louisiana.

Section 4. Cancellation Standards

The following standards shall govern the requirements for the cancellation provisions of vehicle mechanical breakdown contracts.

1. All Mechanical Breakdown Insurance contracts having terms of greater than six months shall be cancelable and refundable upon request of the insured.

2. The refund method to be used shall be the sum of the digits (Rule of 78s) or a refund method that will be more favorable to the insured.

3. The return factor is determined by the number of unused months or the number of unused miles, and shall be based on the full premium (including commissions) paid by the insured.

a. The number of months shall mean the number of months from the effective date of the policy until the expiration date of the policy.

b. The number of miles shall mean the sum of the number of miles on the odometer at the time of purchase and the policy mileage limit.

4. A cancellation fee, not to exceed \$50, may be charged, provided such fee is disclosed to the purchaser at the time of policy purchase.

5. The method of refund and any cancellation fee, shall be fully disclosed to the insured at or before the time of policy purchase by having such information printed in the policy form and the policy application, which shall be agreed to in writing, by the insured.

6. In calculating any refund requested by the insured, no deduction shall be allowed for any claim that has been paid under the contract being canceled.

7. If cancellation is requested in writing by the insured within 30 days from the date of purchase, full refund, minus the cancellation fee, if any, shall be made.

Section 5. Failure to Comply

In addition to any other penalties provided by the Louisiana Insurance Code relating to the regulation of Vehicle Mechanical Breakdown (VMB) insurers, any VMB insurer found to have violated the requirements of this regulation, may be issued a cease and desist order pursuant to R.S. 22:1810.

Section 6. Severability

If any section or provision of this regulation is held invalid, such invalidity shall not affect other sections or provisions which can be given effect without the invalid section or provision, and for this purpose the sections and provisions of the regulation are severable.

Section 7. Effective Date

This regulation shall take effect on June 20, 1998.

A public hearing on this proposed regulation will be held on April 27, 1998 in the Plaza Hearing Room of the Insurance Building Located at 950 North Fifth Street, Baton Rouge, LA, at 9 a.m. All interested persons will be afforded an opportunity to make comments.

Interested persons may submit oral or written comments to Yolanda M. Edwards, Staff Attorney, Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214, telephone (504) 342-9204. Comments will be accepted through the close of business at 4:30 p.m., April 27, 1998.

James H. "Jim" Brown
Commissioner of Insurance

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Vehicle Mechanical Breakdown Insurers Cancellation Provisions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is not anticipated that the Department of Insurance will incur any costs or savings as a result of implementing this proposed regulation.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Adoption of this proposed regulation will have no effect on revenue collections of state or by local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no fiscal impact upon insurance carriers or insureds as a result of the adoption of this proposed regulation. The insurers are currently using the method of cancellation proposed in this regulation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
It is not anticipated that this proposed regulation would have any effect on employment or competition.

Brenda St. Romain
Assistant Commissioner
Management and Finance
9803#014

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Justice Office of the Attorney General

Nonprofit Hospital Acquisitions
(LAC 48:XXV.Chapter 3)

In accordance with R.S. 49:950 et seq., the Office of the Attorney General is proposing to adopt the following rule governing the review and approval of nonprofit hospital acquisitions. The purpose of the rule is to set forth procedures for the review and authorization of nonprofit hospital acquisitions pursuant to R.S. 40:2115.11 through 2115.22.

Title 48

PUBLIC HEALTH—GENERAL

Part XXV. Mergers, Acquisitions, and Re-Organization Chapter 3. Nonprofit Hospital Acquisitions:

Authorization for the Attorney General to Review Nonprofit Hospital Acquisitions

§301. Purpose

A. These rules are adopted in accordance with the public interest of assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. In that regard, the state has a responsibility to protect the public interest in nonprofit hospitals by making certain that the charitable assets of those hospitals are managed prudently pursuant to the provisions of R.S. 40:2115.11 through 2115.22.

B. These rules are adopted to further Louisiana's goal of controlling health care costs and improving the quality of and access to health care for its citizens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§303. Definitions

A. As used within the rules:

Acquirer—any legal entity to which the nonprofit hospital plans to sell, merge, or otherwise contract, along with each affiliate, parent, and/or subsidiary which it directly or indirectly controls, manages, owns, or operates. The *acquirer* may be another nonprofit hospital.

Affiliate—any or all of the following: corporation; partnership; sole proprietorship; joint venture; trust; natural person; or any other entity, whether existing for commercial or noncommercial purposes, however organized, in which any person or entity owning, directly or indirectly or beneficially, 3 percent of the acquirer owns directly, or indirectly, or beneficially, 50 percent or more of the affiliates.

Attachment—each document or object sent or provided with any document or object, and includes each document or object sent with it, whether it be a letter, memorandum, contract, document or other writing or object.

Certified Mail—uninsured first class mail whose delivery is recorded by having the addressee sign for it.

Comment—a written document offering explanation, illustration, criticism, or personal opinion.

Days—consecutive calendar days.

Department—the Louisiana Department of Justice, Office of the Attorney General.

Director—the director of the Civil Division.

Documents or *Document*—all writing or any other record of any kind, including originals and each and every non-identical copy (if different from the original for any reason).

Document(s) includes, but is not limited to:

a. correspondence, memoranda, notes, diaries, calendars, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, and interoffice and intra office communications;

b. notations (of any sort) of conversations, telephone calls, meetings, and other communications;

c. bulletins, printed matter, computer printouts, computer generated output, teletypes, telefax, facsimiles, invoices, worksheets, drafts, alterations, modifications, changes, and amendments of any kind;

d. photographs, charts, maps, graphs, sketches, microfiche, microfilm, videotapes, video recordings, and motion pictures; and

e. any electronic or mechanical records or representations of any kind, including, but not limited to tapes, cassette, diskettes, audio recordings, computer hard drives and other means of storing information.

Expert—one who is knowledgeable in a specialized field, that knowledge being obtained from either education or personal experience. For example, any economist, accountant,

financial advisor, investment banker, broker, valuation specialist, or other person who is consulted, relied upon, retained, or used by the nonprofit and/or acquirer.

Financial Statement—

a. any compilation or statement (audited, unaudited, or draft) of the nonprofit's financial position. *Financial statements* (regardless of precise terminology) include, but are not limited to:

i. tax returns;

ii. balance sheets;

iii. statements of income and expenses;

iv. statements of profit and loss;

v. statements of stockholders' equity; and

vi. statements of changes in financial position;

b. each and every financial statement should include each and every related footnote of the respective financial statement.

Foundation—a permanent fund established and maintained by contributions for charitable, educational, religious, or benevolent purposes.

Nonprofit Hospital or *Nonprofit Entity*—any, some, or all of the firms, companies, or entities which the notifying nonprofit hospital, any of its subsidiaries, affiliates (see *affiliate* definition), firms, companies or entities may control, manage, own or operate. The nonprofit should be the entity filing the notice with the attorney general.

Objection—a written document offered in opposition to the approval of an application which states the reason, grounds, or cause for expressing opposition.

Person—any natural person, public or private corporation (whether or not organized for profit), governmental entity, partnership, association, cooperative, joint venture, sole proprietorship, or other legal entity. With respect to the nonprofit and/or acquirer, the term *person* also includes any natural person acting formally or informally as an employee, officer, director, agent, attorney, or other representative of the nonprofit and/or acquirer.

Persons on Record—persons submitting written documentation to the director, by certified mail, stating objections, comments, or requests for notification of actions by the department involving a particular application. Persons on record status must be renewed by written request, sent by certified mail to the director, prior to December 31 of each calendar year.

Transaction or *Proposed Transaction*—the proposed sale, merger, or other agreement between the nonprofit hospital and the acquirer which resulted in the submission of the notice to the attorney general pursuant to R.S. 40:2115.11 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§305. Notice

A. Nonprofit persons who are parties to a transaction shall give the attorney general at least 30 days notice prior to the anticipated closing of the intended transaction.

B. The written notice shall include all of the following information:

1. the names, addresses and telephone numbers of the parties to the intended transaction;
2. the names, addresses and telephone numbers of the attorneys or other persons who represent the parties in connection with the intended transaction;
3. a general summary of the intended transaction;
4. a general description of the assets involved in the intended transaction and the intended use of the assets after the closing of the intended transaction, including any change in the ownership of tangible or intangible assets;
5. a general summary of all collateral transactions that relate to the intended transaction, including the names, addresses and telephone numbers of the parties involved in the collateral transactions; and
6. the anticipated completion date of the intended transaction.

C. Giving notice shall comply with the following format.

1. The notice shall be in writing, which pages shall be numbered and printed on paper measuring 8½ inches by 11 inches. The margins shall not be less than 1 inch on all sides. Unless otherwise required, the notice shall be printed on white paper.
2. Notice shall be sent to the director by certified mail. The director shall receive notice at least 30 days prior to the proposed transaction.
3. Notice shall not be given by facsimile machine.
4. Notice which does not comply with these rules shall not be accepted and will be returned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§307. Filing of Applications and Additional Documents

A. Filing of Applications

1. Applications shall be filed by delivering an original and three copies to the director.
2. The filing date of a conforming application shall be the date the department determines the application to be a completed application.
3. No application shall be filed by facsimile machine.
4. Applications filed with the department become property of the state.
5. Applications shall be accompanied with the filing fee as determined by §309 in accordance with R.S. 40:2115.22.
6. The application must include the contents of application.
7. The application shall be submitted to the attorney general on the forms provided and include the information requested therein.
8. The department may at any time request any other supplemental or additional documentation, disclosures, information, etc., as it deems necessary to the evaluation. The applicant shall provide the information not later than 10 days after the date of the request.
9. The application must be in the following format.
 - a. Applications shall be submitted to the attorney general on the forms provided and in accordance with the instructions therein.

- b. Trade secret information shall be printed on goldenrod colored paper to assist in identifying material exempt from the Louisiana Public Records Act.
- c. Applications which do not comply with these rules shall not be accepted and will be returned to the applicant.

B. Forms

**LOUISIANA ATTORNEY GENERAL'S APPLICATION
REQUEST FOR INFORMATION FORM
For Certain
NONPROFIT MERGERS, SALES, AND ACQUISITIONS**

PLEASE CAREFULLY REVIEW THE INSTRUCTIONS AND DEFINITIONS FORM PRIOR TO COMPLETING THIS FORM

1. Name of Nonprofit to be Acquired: Identify each and every nonprofit entity or entities (hereinafter "nonprofit") which is the subject of an impending acquisition in accordance with R.S. 40:2115 et seq.

2. Contact Person for Nonprofit: Provide the full legal name, title, address, telephone and facsimile number for the contact person regarding this Form (this individual will also receive any requests for additional information for documents):

3. Directors and Officers: Identify by full legal name and title each and every director and officer of the nonprofit.

4. Corporate Documents of Nonprofit: Attach as Appendix A, all corporate documents relating to the nonprofit entity and selected entities filing this Request. Include corporate documents of all parents, subsidiaries, or affiliates of the nonprofit. For the purpose of this Request, "corporate documents" means the charter or articles of incorporation, bylaws, and any and all amendments to each corporate document.

5. Name of Acquirer: Identify the proposed acquirer of the nonprofit (hereinafter "acquirer") identified in Request #1. Include in your response the identity of any (a) parent, (b) subsidiary, and/or (c) affiliate of the acquirer.

6. Contact Person for Acquirer: Provide the full legal name, title, address, telephone, and facsimile number of the contact person for the acquirer.

7. Corporate Documents of Acquirer: Attach as Appendix B copies of all corporate documents relating to the acquirer identified in Request #4.

8. Value of Nonprofit Assets: What is the aggregate approximate value of the nonprofit assets to be acquired in the proposed transaction?

9. Description of Proposed Transaction: Attach as Appendix C a detailed description of the proposed transaction, including a detailed explanation of what is to be acquired by the acquirer, what is to be retained by the nonprofit(s), and the resulting funds to be received by the nonprofit(s). This should also include an analysis of the purchase price, based upon the nonprofit's interpretation of the letter of intent or definitive contract. The analysis should begin with the nonprofit's balance sheet, should consider the impact of any fund balances and/or liabilities to be retained by the resulting foundation, and end with a resulting fund balance for the proposed foundation to be created. This analysis should include reasonable estimates for any proposed purchase price adjustments called for in the letter of intent or definitive agreement. The objective of this analysis is to enable the Office of the Attorney General to understand the pricing of the transaction and the capitalization of any resulting foundation.

10. Description of Negotiations of the Transaction: Attach as Appendix D a detailed description of all discussions and negotiations between nonprofit and acquirer resulting in the proposed transaction. This response should include, but not be limited to, a summary outline in date sequence of any and all meetings held with the following parties with respect to the proposed transaction:

(a) With the nonprofit's financial advisors or investment bankers related to the proposed transaction (including, but not limited to, management, committees of the board of directors or meetings of the full board);

(b) With prospective purchasers, networkers, merging partners of the nonprofit (or substantially all of the nonprofit), together with a brief summary of the results of such meetings;

(c) With the ultimate acquirer; and

(d) With other parties deemed significant to the transaction (including, but not limited to, outside experts or other consultants).

11. Closing Date: What is the expected date of closing of the proposed transaction?

12. Governmental Filings: Attach as Appendix E all filings with respect to the proposed transaction, including all amendments, appendices, and attachments, and each report or document provided to each federal, state, or local governmental entity regarding the proposed transaction. Include copies of forms to be provided to each such entity, the answer to information or questions on such forms, and each attachment submitted in connection therewith.

13. Meetings with Governmental Officials: Attach as Appendix F summaries of all meetings with federal, state, or local authorities regarding any filings or documents referenced in Request #12. Also, include each and every document which memorializes or discusses any and all meetings or other communications with the United States Department of Justice, Federal Trade Commission, or any other state, federal or local governmental entity in connection with the proposed transaction.

14. Acquirer's Prior Acquisitions: Identify all prior acquisitions by the proposed acquirer with the last three (3) years, including the following information for each:

- (a) Date of Acquisition;
- (b) Entity Acquired;
- (c) City/State;
- (d) Brief Description;
- (e) Purchase Price; and
- (f) Form of Consideration.

15. Letters of Intent: Attach as Appendix G any and all drafts and final versions of any and all letters of intent, confidentiality agreements, or other documents initiating negotiations, contact, or discussion between the acquirer and nonprofit.

16. Contracts or Purchase Agreements: Attach as Appendix H any and all drafts and final versions of asset purchase agreements, contracts or agreements to purchase the nonprofit by the acquirer. Your response must also include any attachments, amendments, schedules, or appendices to such agreements.

17. Fairness Opinions: Attach as Appendix I any and all fairness opinions analyzing the proposed transaction along with any supplemental analysis prepared by the nonprofit or its experts. Include in your response the name of the company and the person(s) who prepared the opinion, their business telephone numbers and addresses, the agreement or engagement letter with such company or person, and background information regarding the company or person's qualifications.

18. Meeting Minutes and Other Information: Attach as Appendix J the following documents with respect to each meeting, whether regular, special, or otherwise, of the board of directors or board of trustees for each nonprofit or acquirer.

(a) Announcements and the persons to whom the announcements were sent;

(b) Agenda;

(c) Minutes and/or resolutions of the board of directors or board of trustees for each nonprofit entity or acquirer which reflect or discuss the proposed transaction, including those regarding the final vote;

(d) Each written report or document provided to the board or board members, including, but not limited to, each committee report and each expert's report;

(e) Each proposal or document referencing or regarding possible or actual sale, merger, acquisitions, or distribution of assets of any nonprofit entity;

(f) Each presentation to the board or any committee to the board; and

(g) Each attachment to (a) through (f).

19. Valuation Information: Attach as Appendix K each appraisal (with each attachment), evaluation (with each attachment), and similar document (with each attachment) concerning the valuation during the last three (3) fiscal years of the nonprofit entities, their assets, their properties, their worth as a going concern, their market value, or their price for sale. This Request shall include, but not be limited to, any appraisals of the common stock of any for-profit subsidiaries of the nonprofit, any appraisals involving property held by the nonprofit.

20. Information Regarding Other Offers: Attach as Appendix K each appraisal (with each attachment), evaluation (with each attachment), and similar document (with each attachment) concerning any negotiation, proposal, or sale either initiated or received by the nonprofit regarding a sale of all or substantially all of its assets, a merger, a joint venture, a combination, an arrangement, a partnership, an acquisition, an alliance, or a networking relationship, and the dollar value of such proposed transaction.

21. Mission Statement: Attach as Appendix M any and all mission statements of the nonprofit.

22. Press Releases and Related Information: Attach as Appendix N any and all press releases, newspaper articles, radio transcripts, audiotapes and videotapes of any television commercials or reports regarding the proposed transaction and any other offers identified in Request # 20.

23. Financial Records: Attach as Appendix O all of the following for the last six (6) fiscal years for both the nonprofit and acquirer, unless otherwise indicated:

(a) Audited and unaudited financial statements. Audits are sometimes presented in abbreviated form or in fuller form, with detailed supplements. Provide the most detailed form of your audit that is available;

(b) Consolidating statements (balance sheets and income statements for each fiscal year);

(c) Year-to-date internal financial statements for the most recent month-end available during the current year. Be sure that the statements are comparative (with the same period of the previous fiscal year), otherwise provide last year's internal financial statements for the corresponding period as well;

(d) If separate audited financial statements are prepared for any of your nonprofit members or affiliates, or any parent or subsidiary of the acquirer, please provide those audits, together with comparative year-to-date financial statements for each such member, affiliate, parent or subsidiary;

(e) For the nonprofit only, projected capital expenditure requirements for the next three (3) years, assuming the nonprofit continues to operate as it has been operating;

(f) Each balance sheet, profit and loss statement, statement of change in financial position of the nonprofit, any entity or company it controls, operates, manages, or is affiliated with and also the same information for the acquirer and any entity which you reasonably believe it owns, operates, manages, or controls;

(g) For the nonprofit only, a detailed schedule of operating expenses, unless already provided with the audits;

(h) For the nonprofit only, an analysis (aging) of accounts receivable by major category, of receivables as of the most recent month-end available, indicating the amounts ultimately considered collectable by the nonprofit;

(i) For the nonprofit only, management compensation (salary, bonus, other benefits) for the five (5) officers of the nonprofit receiving the greatest amount of compensation;

(j) Identify any material off-balance sheet assets or liabilities (i.e., any assets or liabilities not reflected on the most recent audited financial statements) and provide documentation concerning such assets or liabilities. Examples of such items would include a significant under- or over-funding in the pension plan or a current litigation judgment not reflected in the most recent audit;

(k) Identify any material contingent assets or liabilities, and the conditions that must occur for any such contingent assets to be realized or for any such contingent liabilities to be incurred; and

(l) Identify all accounting firms, including the name, address, and telephone number of the accountant(s) primarily responsible for accounting and auditing of the entities for the last six (6) years.

24. Foundation Issues:

(a) Attach as Appendix P the detailed written plan of the preservation, protection, and use of any and all proceeds from the dissolution of the nonprofit, or the sale to or merger with the acquirer. State and fully explain whether any money, property, or proceeds resulting from the transaction referred to in your Notice or the operation of the foundation will benefit any director, officer or for-profit person or entity, directly or indirectly. The detailed plan shall include bylaws, a conflict of interest statement, a defined mission, the proposed investment policy, and granting procedures.

(b) Attach as Appendix Q proof that any asset purchase agreement or other contract, by whatever name, does not incorporate or place any restrictions which any for-profit entity may place on the use of charitable or nonprofit funds and any other funds or property, either now or in the future, by any foundation created or endowed to preserve, disburse, or protect the funds.

(c) Attach as Appendix R a report indicating, showing, explaining, and discussing the properties and assets, whether cash, securities, intangible property, and all other property (listing each encumbrance), available for charitable purposes before and after the transaction and showing or discussing what entity or person will control, manage, operate, deploy, and use the charitable or nonprofit properties or assets. Include in your response the full legal name, title, business address, and telephone number of the individual preparing said report.

25. Existing Foundations or Restricted Donations: Attach as Appendix S any and all documents reflecting any existing foundations or other restricted donations, including, but not limited to, trusts that are designated or intended to benefit the current nonprofit. Include a detailed statement setting forth your intention with regard to such restricted donations.

26. Conflict of Interest, Self-Interest, and Self-Dealing Issues:

(a) Attach as Appendix T an affidavit for each officer and director of the nonprofit.

(b) Attach as Appendix U any and all documents reflecting any possible conflict of interest, self-interest, or self-dealing of any board member, officer, or director in connection with the proposed transaction. Such documents shall include evidence of any disclosures or other curative measures taken by the board and any documents suggesting or referencing financial or employment incentives or inducements offered to any board member, director or officer.

(c) Attach as Appendix V each memorandum, report, letter, or other document suggesting or referencing any employment or position (actual or possible) with acquirer for any officer or director of the nonprofit after the transaction is completed, as well as any assets, funds, annuity, deferred compensation or other economic or tangible benefit to be provided, whether or not in exchange for services rendered or to be rendered to any nonprofit or acquirer.

27. Persons Involved in Decision Making of Planning: Attach as Appendix W a list of the full legal names, titles, addresses, and telephone numbers of each and every officer, director, representative, manager, executive, expert or other persons having substantial input, at any phase of decision making or planning, into the decision or plan for the proposed transaction.

28. Market Studies: Attach as Appendix X each market study (and attachments) done for or by a nonprofit, or otherwise received by a nonprofit. Include an analysis of the nonprofit's market share from the perspectives which are normally tracked by the nonprofit board.

29. Registered Agents for Service or Process: Identify the registered agent for service of process, including his or her complete address, for each nonprofit and for the acquirer.

For Nonprofit: _____

For Acquirer: _____

30. Litigation and Proceedings: Attach as Appendix Y copies of any and all complaints, pleadings, memoranda, court orders, settlements, liens or other security interests, and consent decrees filed in litigation in which the nonprofit and/or acquirer was or is a party.

Please include in your response any and all complaints, pleadings, memoranda, orders, settlements, opinions, notices of investigation (including subpoenas, civil investigative demands or other requests for information), of any state, federal, local government department, court, agency, or any other legal proceeding in which the nonprofit and/or acquirer was or is a party.

**CERTIFICATION AND VERIFICATION
AFFIDAVIT OF THE NONPROFIT**

To be completed by President or Chief Officer

This Requests for Information Form, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with the instructions and definitions issued by the Attorney General. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete. If copies were submitted in lieu of originals, the documents submitted are true and exact copies. I understand that my obligation to provide information pursuant to this Request shall be continuing in nature and shall forthwith notify the Attorney General, in writing, of any representations that have been made or that might have been made in accordance with this Request which need to be updated, corrected or modified. The copies also are authentic for the purposes of Louisiana law. If copies were submitted, I also agree to retain the originals under my care, custody, and control, and I will not destroy or alter the originals without express written consent of the Attorney General or his appointed designee.

I certify, upon personal knowledge, that the attached form has been completed with true and accurate information, **under penalty of perjury**.

STATE of _____ To be completed by Affiant:
Parish/County: _____
Affiant's Name: _____
Signature: _____ Title: _____
Date: _____ Address: _____
Sworn and subscribed before me this _____ day of _____, _____
199____ Telephone No.: _____
Notary Public Facsimile No.: _____
My Commission expires: _____

AFFIDAVIT OF OFFICERS AND DIRECTORS

STATE OF _____ SOCIAL SECURITY NO. _____
PARISH/COUNTY OF _____

I, _____, after first being duly sworn, do hereby depose and, upon personal knowledge, state as follows:

1. I am an officer/director (please circle appropriate response) of _____ (insert name of nonprofit).
2. I have been an officer/director (please circle appropriate response) since _____, 199____. Please identify any committees you have served on, the length of service on each committee, and any titles you have held on such committees.

3. My home address is _____

4. My business telephone number is _____. My business facsimile number is _____.
5. I do/do not (circle appropriate response) own stock or options and/or warrants to purchase stock in _____ (Insert name of acquirer) or any parent, subsidiary, or affiliated company.
6. _____ (insert "no one in my immediate family," or the name[s] of family member[s], own(s) stock or options and/or warrants to purchase stock in _____ (insert name of acquirer) or any parent, subsidiary, or affiliated company.
7. I am/am not (circle appropriate response) employed by _____ (insert name of acquirer) or any parent, subsidiary, or affiliate company.
8. _____ (insert "no one in my immediate family" or the name[s] of family member[s] is/are employed by _____ (insert name of acquirer) or any parent, subsidiary, or affiliated company.
9. I will/will not (circle correct response) receive any financial benefit from the sale/merger (circle correct response) of _____ (identify nonprofit to be acquired) to _____ (insert name of acquirer).
10. _____ (insert "no one in my immediate family," or the name[s] of family member[s] will receive any financial benefit from the sale/merger (circle correct response) of _____ (identify nonprofit to be acquired) _____ (insert name of acquirer).
11. I have/have not (circle appropriate response) been contacted or otherwise requested or been offered a position on the _____ (insert name of acquirer) board or any of its subsidiaries, affiliates, or parent companies, or otherwise been offered employment of any sort with _____ (insert name of acquirer) or any of its subsidiaries, affiliates or parent companies.

12. I am/am not compensated for my services as an officer/director (circle appropriate response) of _____ (insert name of nonprofit). If your response is that you are compensated, please state the amount of your compensation per year: _____.

13. Briefly describe your education background:

14. Briefly describe your business or work experience:

15. Explain the reasons why you voted to approve the transaction to merge/sell _____ (insert nonprofit's name) to _____ (insert name of acquirer).

16. Please briefly explain any information you had regarding valuation of _____ (insert nonprofit's name) and other options available to _____ (insert nonprofit's name) prior to approving the transaction referenced in Item 15.

17. I do/do not (circle appropriate response) plan to become a director or officer of the foundation or other nonprofit entity to be created from the assets resulting from the sale or merger of _____ (insert nonprofit's name) to _____ (insert name of acquirer). I will/will not (circle appropriate response) receive compensation for my service in such position. If your response is that you will be compensated, please state the amount of the compensation per year: _____

18. I do/do not (circle appropriate response) have any conflict of interest, self-interest, financial interest or other self-dealing with regard to the proposed transaction with _____ (insert name of acquirer). If your answer is yes, please explain such interest in detail.

I certify, upon personal knowledge, that the information in this affidavit is true, accurate, and complete, **under penalty of perjury**.

Affiant's
Signature: _____
Date: _____

Sworn and subscribed
before me this _____
day of _____,
199____

Notary Public
My Commission expires: _____

**CERTIFICATION AND VERIFICATION
AFFIDAVIT OF THE ACQUIRER**

In order to assist _____ (insert name of nonprofit), _____ (insert name of acquirer) provided information used to complete the Request for Information Form by _____ (insert name of nonprofit). Attached as Exhibit A to this Affidavit are _____'s (insert name of acquirer) responses to the Request for Information Form, together with any and all appendices and attachments thereto. Exhibit A was prepared and assembled under my supervision in accordance with the instructions and definitions and definitions issued by the Attorney General. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete. If copies were submitted in lieu of originals, the documents submitted are true and exact copies. I understand that my obligation to provide information pursuant to this Request shall be continuing in nature and shall forthwith notify the Attorney General, in writing, of any representations that have been or that might have been made in accordance with this Request which need to be updated, corrected or modified. The copies also are authentic for the purpose of Louisiana law. If copies were submitted, I also agree to retain the originals under my care, custody, and control, and I will not destroy or alter the originals without the express written consent of the Attorney General or his appointed designee.

I certify, upon personal knowledge, that the attached form has been completed with true and accurate information, **under penalty of perjury.**

STATE of _____	To be completed by Affiant:
Parish/County: _____	Name: _____
Affiant's	Title: _____
Signature: _____	Address: _____
Date: _____	_____
Sworn and subscribed before me	_____
this ____ day of _____,	_____
199 ____	_____
_____	Telephone No.: _____
Notary Public	Facsimile No.: _____
My Commission expires: _____	

**LOUISIANA ATTORNEY GENERAL'S
Request for Information Form for Certain
Nonprofit Mergers, Sales, and Acquisitions**

INSTRUCTIONS AND DEFINITIONS

1. All responses to the Request for Information Form must be typed or clearly printed in black ink. **You must use only the official forms.**
2. All documents and appendices must be provided in compliance with the following:
 - (a) one set of original documents and three (3) separate sets of legible and collated copies of all documents must be submitted;
 - (b) each appendix shall be submitted in a separate legal size folder clearly marked with the appendix number along with the name of your nonprofit entity and the date of the Attorney General's Request for Information, set forth in Instruction #9. *For example, Nonprofit Company X, Appendix A, July 1, 1996;* and
 - (c) each document must be consecutively numbered and labeled along with an abbreviation for your nonprofit entity. *For example, the first document of a submission by the Nonprofit Company X, would be labeled NCX0001.* These initials and numbers should appear in the lower right-hand corner of each document.
3. All amendments or late-filed documents or responses must be clearly labeled to indicate which Request or appendix folder the document should be placed in upon receipt by the State. Such documents must be submitted in compliance with all other instructions herein.
4. Unless otherwise indicated, documents to be produced pursuant to this Request for Information Form include each and every document prepared, sent, dated, received, in effect, or which otherwise came into existence during the last three (3) years through the date of the production of documents by the nonprofit pursuant to this Request. Responses to the Request must be supplemented, corrected, and updated until the close of the transaction. **The Attorney General, at his discretion, may require the production of additional documents.**

5. For each Request calling for the production of documents, produce each and every responsive document in the nonprofit and/or acquiring entity's care, possession, custody, or control, without regard to the physical location of those documents.

6. If the nonprofit and/or acquiring entity possesses no documents responsive to a paragraph of this Request, the nonprofit and/or acquirer must state this fact, specifying the paragraph(s) or subparagraph(s) concerned, in the response. If the nonprofit and/or acquirer must submit documents at a later date than that set forth in Instruction #9, the following procedure is required: the nonprofit and/or acquirer must state this fact, specify the paragraph(s) or subparagraph(s) concerned, identify the document(s) to be produced, and state the expected date of production.

7. If the nonprofit and/or entity asserts a privilege in response to a Request, the nonprofit and/or acquiring entity must state the privilege, the basis of the privilege, and identify the documents and Request to which the privilege attaches.

8. Responses to Requests not requiring the production of documents should be typed or clearly printed in black on the Request for Information Form. If additional space is required, you should attach additional 8 1/2" x 11" size pages, clearly noting at the top of the page to which Request the additional information is responsive and the identity of the nonprofit providing the information. *For example: Nonprofit Company X, Continuation to Request #3.*

9. This Request for Information is dated _____. The Attorney General must receive a complete response to this initial Request for Information Form, no later than _____ 199_. If you are unable to provide the information by the date set forth above, please contact, _____, Assistant Attorney General, at _____ within twenty-four (24) hours to discuss an extension of the statutory fifteen (15) day period in order to extend the time period for you to respond to this Request. If you request an extension of the time period, you will be provided an Extension of the fifteen (15) Day Period Form, via facsimile transmission, which must be returned within twenty-four (24) hours of your discussion with the Assistant Attorney General or paralegal in order to extend the response period for the Request for Information. All extensions are subject to the final approval of the Attorney General.

10. All responses to this Request for Information shall be sent by United States Mail, hand delivered, or a nationally recognized express delivery service to the following individual.

Assistant Attorney General

11. The Request for Information Form is not complete or valid without the Certification and Verification Affidavits executed under oath in the presence of a notary and attached to the Request for Information Form.

12. Copies may be submitted in lieu of originals as long as the nonprofit and/or acquirer indicate(s) that the documents are copies, the location of the originals, and the reason for the substitution of copies. All originals must be returned as set forth in the Certification and Verification Affidavits. Additionally, the nonprofit and/or acquirer must sign the Certification of Verification Affidavit(s), agreeing that the documents are authentic for the purposes of Louisiana law.

13. All questions regarding these forms, the scope of any Request, and instruction, or any definitions shall be directed to the Assistant Attorney General listed in Instruction #10.

14. This Request for Information Packet should include all of the following forms:

- Form : Instructions and Definitions
- Form : Request for Information Form
- Form : Certification and Verification Affidavit of the Nonprofit Affidavit of Officers and Directors

If your packet is missing any of the above listed forms, please contact by telephone the Assistant Attorney General listed in Instruction #10 immediately. Your response to the Request for Information Form is not complete until the Attorney General's Office has received all of the above listed forms, fully completed.

15. In the lower right-hand corner of each page of the Request for Information Form, type or print the name of the nonprofit in the space provided.

16. If two (2) or more nonprofits are merging, each nonprofit must complete the entire Request for Information Packet.

**EXTENSION OF THE FIFTEEN (15) DAY
PERIOD FORM FOR CERTAIN NONPROFITS**

On behalf of _____ (insert name of nonprofit), I, _____ (insert your name), hereby waive any right _____ (insert name of nonprofit) may have for the Attorney General to review the proposed application transaction between _____ (insert name of acquirer) within a fifteen (15) day period. On behalf of _____ (insert name of nonprofit), I hereby agree and consent to an extension of the fifteen (15) day period within which the Louisiana Attorney General's Office may review the transaction. Specifically, I agree that the fifteen (15) day period will be extended an additional _____ (insert number) days. Thus, the Attorney General's right to review _____'s (insert name of nonprofit) proposed transaction application shall not conclude before _____, 199____. (insert date extension will conclude). _____ (insert name of nonprofit) hereby agrees not to conclude or finalize the transaction until after _____, 199____. _____ (insert day after extension will conclude). I further agree to submit all documents requested by the Attorney General in the Request for Information Packet no later than _____, 199____.

The reason for this request is as follows: _____

On behalf of _____ (insert name of nonprofit), I, _____ (insert your name), represent and warrant that I have authority to act for and bind _____ (insert name of nonprofit).

I also understand that this Request for an Extension is subject to the final approval of the Attorney General. I certify, that this extension form has been completed with true and information, **under penalty of perjury.**

STATE of _____ To be completed by Affiant:
County of _____
Affiant's Name: _____
Signature: _____ Title: _____
Date: _____ Address: _____
Sworn and subscribed before me _____
this ____ day of _____, _____
199____
Notary Public Phone No.: _____
My Commission expires: _____ Facsimile No.: _____

C. Filing of Additional Documents

1. Format required for filing of additional documents shall be in accord with §307.A.9.

2. Documents relating to an application shall be filed by delivering an original and three copies to the director.

3. Additional documents to an application may be accepted by facsimile machine provided that the original and three copies thereof are received by the director no later than seven days after transmission of the facsimile.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§309. Fees

A. Remittance of Fees

1. In accordance with R.S. 40:2115.22 fees shall be remitted with the application and reports required by R.S. 40:2115.19. Fees shall be reasonably related to the costs incurred by the department in considering the application, evaluating reports, and performing other necessary administrative duties.

2. Fees shall be remitted only by certified check, cashier's check, or bank money order, and made payable to the department.

3. The fee shall be due with the application. The fee shall be \$50,000. If the actual cost incurred by the department is greater, the applicant shall pay any additional amounts due as instructed by the department.

4. The fee due with the filing of the report as required by R.S. 40:2115.19 shall be \$15,000. If the actual cost incurred by the department is greater, the parties involved shall pay any additional amounts due as instructed by the department.

B. If it becomes necessary for the department to file suit to enforce any provision of applicable law, these rules, or any of the terms of an approved application, then applicants/parties shall be responsible for all costs associated with any such litigation, including, but not limited to all court costs and attorneys fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§311. Notification of Pending Application and Public Hearing

A. In accordance with R.S. 40:2115.14:

1. within five working days of receipt of a completed application, the department shall notify all persons of record by first class United States mail of the filing of such application, and publish in the official journal of the parish where the hospital is located notice of the filing. The notice shall state the following:

- a. that an application has been received;
- b. the names of the parties to the agreement;
- c. a description of the contents of the agreement; and
- d. the date by which a person may submit comments

about the application to the attorney general.

B. In accordance with R.S. 40:2115.15:

1. the attorney general shall during the course of review of the application hold a public hearing in which any person may file written comments and exhibits, or may appear and make a statement;

2. the hearing shall be held no later than 30 days after receipt of a completed application. At least 10 working days prior to the scheduled public hearing, the department shall publish in the official journal of the parish where the hospital is located the location, date and time of the public hearing to be held in Baton Rouge, Louisiana;

3. at the public hearing, all interested persons shall be allowed to present testimony, facts, or evidence related to the application and shall be permitted to ask questions. The

department shall also receive comments regarding the transaction from any interested person; and

4. if requested by the department, persons required to appear and testify under oath, shall include, but not be limited to:

a. any expert or consultant retained by the applicant who was directly or indirectly involved in the preparation of any financial and/or economic analysis of the proposed transaction;

b. any independent expert or consultant retained by the department to review the proposed transaction regarding his or her finding and analysis; and

c. parties to the agreement, officers, and members of the governing boards of the facilities involved;

5. the department may require additional information or testimony from other persons, including but not limited to, members of the medical staff, nursing staff, contract employees, architects, engineers, other employees, or contractors of the facilities involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§313. Application Review

A. In accordance with R.S. 40:2115.14:

1. the attorney general shall, within 15 days after the date an application is received, determine if the application is complete for the purposes of review. If the department determines that an application is unclear, incomplete, or contains an insufficient basis upon which to provide a decision, the application shall be returned to the applicant;

2. if the attorney general determines that an application is incomplete, he shall notify the applicant within 15 days after the date the application was received, stating the reasons for his determination of incompleteness with reference to the particular questions for which a deficiency is noted;

3. if an application is returned to the applicant and the applicant will be resubmitting the application for further review, the filing fee shall remain deposited; and

4. if an application is returned and the applicant elects not to resubmit an amended application, the department shall return the filing fee submitted with the application less costs associated with the review process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§315. Final Decision

A. The attorney general shall review the completed application. Within 60 days after receipt of a completed application, the attorney general shall either:

1. approve the acquisition, with or without specific modifications; or

2. disapprove the acquisition.

B. Any approval shall be conditioned upon the periodic submission of specific data relating to cost, access, and quality, and to the extent feasible, identify objective standards of cost, access, and quality by which the success of the arrangement will be measured.

1. The final decision shall be in writing and be based

upon findings of fact and conclusions of law supporting the decision.

2. The department may condition approval on a modification of all or part of the proposed arrangement.

3. A copy of the final decision shall be sent, by certified mail, to the applicant. All persons on record shall be provided notice of the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§317. Reports and Ongoing Supervision of Certificates

A. In accordance with R.S. 40:2115.19, the parties to the agreement shall submit information and supporting data on an annual basis regarding the current status of the agreement, including information relative to the continued benefits, any disadvantages of the agreement, and sufficient information to evaluate whether any terms and conditions imposed by the department have been met or otherwise satisfied. Reports shall be due on or before the annual anniversary date of the approval. Parties are under a continuing obligation to provide the department with any change to the information contained in the application subsequent to the approval of the application. Such information shall be provided to the department in a timely fashion or within a reasonable time that such information is known to the parties. The attorney general may subpoena information and documents reasonably necessary to assure compliance.

B. The information and supporting data that must be submitted to the department shall include, but not be limited to, the following:

1. an update of all the information required in the application;

2. any change in the geographic territory that is served by the health care equipment, facilities, personnel, or services which are subject of the agreement;

3. a detailed explanation of the actual effects of the agreement on each party, including any change in volume, market share, prices, and revenues;

4. a detailed explanation of how the agreement has affected the cost, access, and quality of services provided by each party; and

5. any additional information requested by the department.

C. Requested data shall be in the following format.

1. The page shall be numbered and printed on paper measuring 8½ by 11 inches. The margins shall not be less than 1 inch on all sides. Unless otherwise required, all data shall be printed on white paper.

2. Trade secret information shall be designated and printed on goldenrod colored paper to assist identifying material exempt under the Louisiana Public Records Act.

D. The department may, at any time, require the submission of additional data or alter the time schedule for submission of information. The parties shall be notified by certified mail of any requirement for the submission of additional information or alteration of the time for submission of materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

§319. Revocation

A. If at any time, the attorney general receives information indicating that the acquiring person is not fulfilling the commitment to the affected community as provided for in R.S. 40:2115.18, the attorney general shall hold a hearing upon 10 days notice to the affected parties.

1. If after the hearing the attorney general determines that the information is true, it may petition the Louisiana Department of Health and Hospitals to revoke the license issued to the purchaser.

2. Any action for license revocation shall be conducted in accordance with the provisions of R.S. 40:2109 et seq., and the regulations promulgated thereunder.

B. Notwithstanding any other provision of this part any amendment or alteration to an approved cooperative, merger, or consolidation agreement and any material change in the operations or conduct of any party to a cooperative, merger, joint venture, or consolidation shall be considered a new agreement and shall not take effect or occur until the attorney general has approved the amendment, alteration, or change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2115.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, LR 24:

Any interested person may submit written comments regarding the contents of the proposed rule to Kay Kirkpatrick, Deputy Attorney General, Civil/Gaming Program, Attorney General's Office, Box 94005, Baton Rouge, LA 70801-94005. All comments must be received no later than 5 p.m., April 20, 1998.

Kay Kirkpatrick
Deputy Attorney General

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Nonprofit Hospital Acquisitions**

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

The rules implement legislation that provides that no not-for-profit hospital shall be acquired by any person unless and until the acquisition is reviewed and approved by the attorney general. The estimated costs to the Department of Justice will be \$68,375 for FY 97-98, \$174,528 for FY 98-99, and \$175,453 for FY 99-2000. The increased costs to the department will be offset by the imposition of fees generated by the proposed rules. There will be no effect on local governmental units.

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

Fees are estimated to generate \$68,375 for the first fiscal year, \$174,528 for the second, and \$175,453 for the following year, and will be sufficient to implement the proposed action. The rules will have no effect on revenue collections for local governments.

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

The rules are adopted in accordance with the public interest

of assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. Direct costs to applicants will include an application fee of \$50,000 and annual reporting fees of \$15,000 for the ensuing five years. If actual costs incurred by the department are greater, the applicant shall pay additional amounts due as instructed by the department.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The attorney general shall approve the acquisition unless he finds that the acquisition is not in the public interest. Impacts on competition and employment may be factors used to determine whether the acquisition is in the public interest. At this time, the estimated effect is unknown.

E. Kay Kirkpatrick
Deputy Attorney General
9803#027

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Drug Testing (LAC 43:XIII.3103, 3107, and 3109)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby proposes to amend the drug testing regulations.

Title 43

NATURAL RESOURCES

Part XIII. Office of Conservation—Pipeline Safety

Subpart 1. General Provisions

Chapter 31. Drug Testing

§3103. Definitions

* * *

Administrator—the administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

* * *

State Agency—an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:532 (June 1990), amended LR 18:852 (August 1992), LR 21:826 (August 1995), LR 24:

§3107. Anti-Drug Plan

* * *

B. The administrator or the state agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant state procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 18:852 (August 1992), LR 21:826 (August 1995), LR 24:

Chapter 33. Alcohol Misuse Prevention Program
§3309. Definitions

As used in this Chapter:

* * *

State Agency—an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:829 (August 1995), amended LR 24:

Comments and views regarding the proposed rules and regulations will be accepted until 5 p.m., April 24, 1998. Comments should be directed, in writing, to Warren Fleet, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275.

A public hearing will be held at 9 a.m., April 27, 1998, in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA.

Warren A. Fleet
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Drug Testing

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

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

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

The proposed amendments 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 amendments will not have any costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments will not have any effect on competition and employment.

Mariano G. Hinojosa
Director of Pipelines
9803#059

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Natural Resources
Office of Conservation

Natural Gas Pipeline Safety
(LAC 43:XIII.Chapters 1-29)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby proposes to amend the gas safety regulations.

Title 43

NATURAL RESOURCES

Part XIII. Office of Conservation—Pipeline Safety

Subpart 1. General Provisions

Chapter 1. General

§105. Incorporation by Reference

A. Any documents or portions thereof incorporated by reference in this Part are included in this Part as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this Part.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§125. Definitions

* * *

Petroleum Gas—propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 1,434 kPa (208 psig) at 38EC (100EF).

* * *

Transmission Line—a pipeline, other than a gathering line, that:

1. transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center;

2. operates at a hoop stress of 20 percent or more of SMYS; or

3. transports gas within a storage field. A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 18:852 (August 1992), LR 20:442 (1994), LR 21:821 (August 1995), LR 24:

Chapter 3. Reporting of Incidents, Safety-Related Conditions, and Annual Reports

§317. Report Forms

Copies of the prescribed report forms are available without charge upon request from the address given in §307. Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper. In addition, the information required by these forms may be submitted by any other means that is acceptable to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:254 (March 1985), amended LR 20:442 (April 1994), LR 24:

§323. Filing Safety-Related Condition Reports

A. Each report of a safety-related condition under §321.A must be filed concurrently and (received by the commissioner and associate administrator, OPS) in writing within five working days (not including Saturday, Sunday, state or federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (FAX), dial (504) 342-3094 and (202) 366-7128.

B. ...

1. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:254 (March 1985), amended LR 18:854 (August 1992), LR 20:443 (April 1994), LR 24:

Chapter 5. Class Locations

§501. Class Locations

A. This Section classifies pipeline locations for purposes of this Part. The following criteria apply to classifications under this Section.

1. A *class location unit* is an onshore area that extends 220 yards on either side of the centerline of any continuous one-mile length of pipeline.

2. Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

B. Except as provided in Subsection C of this Section, pipeline locations are classified as follows.

1. A Class 1 location is:

a. an offshore area; or

b. any class location unit that has 10 or fewer buildings intended for human occupancy.

2. A Class 2 location is any class location unit that has more than 10 but fewer than 46 buildings intended for human occupancy.

3. A Class 3 location is:

a. any class location unit that has 46 or more buildings intended for human occupancy; or

b. an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on

at least five days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

4. A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

C. The length of Class locations 2, 3, and 4 may be adjusted as follows.

1. A Class 4 location ends 220 yards from the nearest building with four or more stories above ground.

2. When a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the class location ends 220 yards from the nearest building in the cluster.

D. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:443 (April 1994), LR 24:

§503. Gathering Lines and Petroleum Gas Systems

A. ...

B. Petroleum Gas Systems

1. each plant that supplies petroleum gas by pipeline to a natural gas distribution system must meet the requirements of this Part and ANSI/NFPA 58 and 59.

2. each pipeline system subject to this Part that transports only petroleum gas or petroleum gas/air mixtures must meet the requirements of this Part and of ANSI/NFPA 58 and 59.

3. in the event of a conflict between this Part and ANSI/NFPA 58 and 59, ANSI/NFPA 58 and 59 prevail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:443 (April 1994), LR 21:821 (August 1995), LR 24:

§509. Customer Notification

A. This Section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this Section, *customer's buried piping* does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, *maintain* means monitor for corrosion according to §2117 if the customer's buried piping is metallic, survey for leaks according to §2923, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

B. Each operator shall notify each customer once in writing of the following information:

1. the operator does not maintain the customer's buried piping.

2. if the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.

3. buried gas piping should be:

a. periodically inspected for leaks;

b. periodically inspected for corrosion if the piping is metallic; and

c. repaired if any unsafe condition is discovered.

4. When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.

5. The operator (if applicable), plumbers, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

C. Each operator shall notify each customer not later than August 14, 1996 or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers.

D. Each operator must make the following records available for inspection by the administrator or a state agency participating under 49 U.S.C. 60105 or 60106:

1. a copy of the notice currently in use; and

2. evidence that notices have been sent to customers within the previous three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

Chapter 7. Qualification of Pipe

§713. Marking of Materials

A. Except as provided in §713.D, each valve, fitting, length of pipe, and other component must be marked:

1. as prescribed in the specification or standard to which it was manufactured, except that thermoplastic fittings must be marked in accordance with ASTM D 2513; or

2. ...

B. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 18:854 (August 1992), LR 20:443 (April 1994), LR 24:

Chapter 9. Pipe Design

§905. Design Formula for Steel Pipe

A. - C.2.a.i. ...

ii. the lowest yield strength determined by the tensile tests,

b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§917. Design of Plastic Pipe

Subject to the limitations of §919, the design pressure for plastic pipe is determined in accordance with either of the following formulas:

$$P = 2S \frac{t}{(D&t)} \times 0.32$$

$$P = \frac{2S}{(SDR&1)} \times 0.32$$

where:

P = Design pressure, gauge, kPa (psig).

S = For thermoplastic pipe, the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to 23EC (73EF), 38EC (100EF), 49EC (120EF), or 60EC (140EF); for reinforced thermosetting plastic pipe, 75,842 kPa (11,000 psi).

t = Specified wall thickness, mm (in.).

D = Specified outside diameter, mm (in.).

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 18:855 (August 1992), LR 24:

§919. Design Limitations for Plastic Pipe

A. - A.2. ...

B. Plastic pipe may not be used where operating temperatures of the pipe will be:

1. below -29EC (-20EF), or -40EC (-40EF) if all pipe and pipeline components whose operating temperature will be below -29EC (-20EF) have a temperature rating by the manufacturer consistent with that operating temperature; or

2. above the following applicable temperatures:

a. for thermoplastic pipe, the temperature at which the long-term hydrostatic strength used in the design formula under §917 is determined. However, if the pipe was manufactured before May 18, 1978 and its long-term hydrostatic strength was determined at 23EC (73EF), it may be used at temperatures up to 38EC (100EF).

b. for reinforced thermosetting plastic pipe, 66EC (150EF).

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

Chapter 11. Pipeline Design Requirements

§1141. Transmission Line Valves

A. Each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows, unless in a particular case the administrator finds that alternative spacing would provide an equivalent level of safety:

1. - 4. ...

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§1151. Vaults: Drainage and Waterproofing

A. - B. ...

C. Electrical equipment in vaults must conform to the applicable requirements of Class 1, Group D, of the National Electrical Code, ANSI/NFPA 70.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§1165. Instrument, Control, and Sampling Pipe and Components

A. ...

B. Materials and Design. All materials employed for pipe and components must be designed to meet the particular conditions of service and the following:

1. ...

2. except for takeoff lines that can be isolated from sources of pressure by other valving, a shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

3. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:445 (April 1994), LR 24:

Chapter 13. Welding Requirements

§1305. Qualification of Welders

A. ...

B. A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in Section I of Appendix C of this Part. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under Section II of Appendix C of this Part as a requirement of the qualifying test.

1. - 2.b. Repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§1307. Limitations on Welders

A. - B. ...

C. A welder qualified under §1507.A:

1. may not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding six calendar months the welder has had one weld tested and found acceptable under Section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A of this Part may weld but may not requalify under that earlier edition; and

2. may not weld on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS unless the welder is tested in accordance with Subsection D.1 of this Section or requalifies under Subsection D.1 or D.2 of this Section.

D. A welder qualified under §1305.B may not weld unless:

1. within the preceding 15 calendar months, but at least once each calendar year, the welder has requalified under §1305.B; or

2. within the preceding 7½ calendar months, but at least twice each calendar year, the welder has had:

a. a production weld cut out, tested, and found acceptable in accordance with the qualifying test; or

b. for welders who work only on service lines 2 inches or smaller in diameter, two sample welds tested and found acceptable in accordance with the test in Section III of Appendix C of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§1315. Inspection and Test of Welds

A. - B.2. ...

C. The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 6 of API Standard 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if the Appendix to API Standard 1104 applies to the weld, the acceptability of the weld may be further determined under that Appendix.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§1317. Nondestructive Testing

A. - D.3. ...

4. at pipeline tie-ins, including tie-ins of replacement sections, 100 percent.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

Chapter 15. Pipe Joining Requirements

§1509. Plastic Pipe

A. - C.2. ...

3. an electrofusion joint must be joined utilizing the equipment and techniques of the fittings' manufacturer or equipment and techniques shown, by testing joints to the requirements of §1511.A.1.c, to be at least equivalent to those of the fittings' manufacturer.

D. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:445 (April 1994), LR 24:

§1511. Plastic Pipe; Qualifying Joining Procedures

A. - A.1.a. ...

b. in the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517; or

c. in the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) or ASTM Designation F1055;

2. - 3. ...

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:445 (April 1994), LR 24:

Chapter 17. Transmission Line Construction **§1717. Protection from Hazards**

A. The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:446 (April 1994), LR 24:

§1719. Installation of Pipe in a Ditch

A. - B.2. ...

C. All offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, except pipe in the Gulf of Mexico and its inlets under 15 feet of water, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. Pipe in the Gulf of Mexico and its inlets under 15 feet of water must be installed so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:446 (April 1994), LR 24:

§1721. Installation of Plastic Pipe

A. Plastic pipe must be installed below ground level unless otherwise permitted by Subsection G of this Section.

B. - F. ...

G. Uncased plastic pipe may be temporarily installed above ground level under the following conditions:

1. the operator must be able to demonstrate that the cumulative aboveground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or two years, whichever is less.

2. the pipe either is located where damage by external forces is unlikely or is otherwise protected against such damage.

3. the pipe adequately resists exposure to ultraviolet light and high and low temperatures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§1727. Cover

A. Except as provided in §1727.C, E, F and G, each buried transmission line must be installed with a minimum cover as follows:

B. - D.3. ...

E. Except as provided in §1727.C, all pipe installed in a navigable river, stream, or harbor must be installed with a minimum cover of 48 inches in soil or 24 inches in consolidated rock between the top of the pipe and the natural bottom.

F. All pipe installed offshore, except in the Gulf of Mexico and its inlets, under water not more than 200 feet deep, as measured from the mean low tide, must be installed as follows:

1. except as provided in §1727.C, pipe under water less than 12 feet deep, must be installed with a minimum cover of 36 inches in soil or eighteen inches in consolidated rock between the top of the pipe and the natural bottom.

2. pipe under water at least 12 feet deep must be installed so that the top of the pipe is below the natural bottom, unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means.

G. All pipelines installed under water in the Gulf of Mexico and its inlets, as defined in §125, must be installed in accordance with §2712.B.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:446 (April 1994), LR 24:

Chapter 19. Meters, Regulators, Service Lines and Valve Requirements

§1925. Service Lines: Plastic

A. Each plastic service line outside a building must be installed below ground level, except that:

1. it may be installed in accordance with §1721.G; and
2. it may terminate above ground level and outside the building, if:

a. the above ground level part of the plastic service line is protected against deterioration and external damage; and

b. the plastic service line is not used to support external loads.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§1931. Service Lines: Excess Flow Valve Performance Standards

A. Excess flow valves to be used on single residence service lines that operate continuously throughout the year at a pressure not less than 10 psig must be manufactured and tested by the manufacturer according to an industry

specification, or the manufacturer's written specification, to ensure that each valve will:

1. function properly up to the maximum operating pressure at which the valve is rated;
2. function properly at all temperatures reasonably expected in the operating environment of the service line;
3. at 10 psig:
 - a. close at, or not more than 50 percent above, the rated closure flow rate specified by the manufacturer; and
 - b. upon closure, reduce gas flow:
 - i. for an excess flow valve designed to allow pressure to equalize across the valve, to no more than 5 percent of the manufacturer's specified closure flow rate, up to a maximum of 20 cubic feet per hour; or
 - ii. for an excess flow valve designed to prevent equalization of pressure across the valve, to no more than 0.4 cubic feet per hour; and
4. not close when the pressure is less than the manufacturer's minimum specified operating pressure and the flow rate is below the manufacturer's minimum specified closure flow rate.

B. An excess flow valve must meet the applicable requirements of Chapters 7 and 11 of this Part.

C. An operator must mark or otherwise identify the presence of an excess flow valve in the service line.

D. An operator shall locate an excess flow valve as near as practical to the fitting connecting the service line to its source of gas supply.

E. An operator should not install an excess flow valve on a service line where the operator has prior experience with contaminants in the gas stream, where these contaminants could be expected to cause the excess flow valve to malfunction or where the excess flow valve would interfere with necessary operation and maintenance activities on the service, such as blowing liquids from the line.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

Chapter 21. Corrosion Requirements

§2107. External Corrosion Control: Buried or Submerged Pipelines Installed after July 31, 1971

A. - A.1. ...

2. it must have a cathodic protection system designed to protect the pipeline in its entirety in accordance with this Chapter, installed and placed in operation within one year after completion of construction.

B. - E. ...

F. This Section does not apply to electrically isolated, metal alloy fittings in plastic pipelines, if:

1. for the size fitting to be used, an operator can show by tests, investigation, or experience in the area of application that adequate corrosion control is provided by alloy composition; and
2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§2127. Internal Corrosion Control: General

A. - B.3. ...

C. Gas containing more than 0.25 grain of hydrogen sulfide per 100 standard cubic feet (four parts per million) may not be stored in pipe-type or bottle-type holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:446 (April 1994), LR 24:

§2137. Remedial Measures: Transmission Lines

A. - B. ...

C. Under §2137.A and B, the strength of pipe based on actual remaining wall thickness may be determined by the procedure in ASME/ANSI B31G or the procedure in AGA Pipeline Research Committee Project PR 3-805 (with RSTRENG disk). Both procedures apply to corroded regions that do not penetrate the pipe wall, subject to the limitations prescribed in the procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§2143. Corrosion Control Records

A. Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

B. Each record or map required by Subsection A of this Section must be retained for as long as the pipeline remains in service.

C. Each operator shall maintain a record of each test, survey, or inspection required by this Subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least five years, except that records related to §§2117.A and E and 2127.B must be retained for as long as the pipeline remains in service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

Chapter 23. Test Requirements

§2313. Test Requirements for Plastic Pipelines

A. - B. ...

C. The test pressure must be at least 150 percent of the maximum operating pressure or 50 psig, whichever is greater. However, the maximum test pressure may not be more than three times the pressure determined under §917, at a temperature not less than the pipe temperature during the test.

D. During the test, the temperature of thermoplastic material may not be more than 38EC (100EF), or the temperature at which the material's long-term hydrostatic strength has been determined under the listed specification, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

Chapter 25. Uprating

§2503. General Requirements

A. - C. ...

D. Limitation on increase in maximum allowable operating pressure. Except as provided in §2505.C, a new maximum allowable operating pressure established under this Chapter may not exceed the maximum that would be allowed under this Part for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if any variable necessary to determine the design pressure under the design formula (§905) is unknown, the MAOP may be increased as provided in §2721.A.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

Chapter 27. General Operating Requirements

§2703. General Provisions

A. - B. ...

C. The administrator or the state agency that has submitted a current certification under the pipeline safety laws, (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant state procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 18:857 (August 1992), LR 21:821 (August 1995), LR 24:

§2707. Initial Determination of Class Location and Confirmation or Establishment of Maximum Allowable Operating Pressure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), repealed LR 24:

§2715. Damage Prevention Program

A. - B.1. ...

2. provide for general notification of the public in the vicinity of the pipeline and actual notification of the persons identified in Subsection B.1 of the following as often as needed to make them aware of the damage prevention program:

3. - 6.b. ...

C. A damage prevention program under this Section is not required for the following pipelines:

1. pipelines located offshore;

2. pipelines, other than those located offshore, in Class 2 or 3 locations until September 20, 1995;

3. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§2721. Maximum Allowable Operating Pressure: Steel or Plastic Pipelines

A. Except as provided in Subsection C of this Section, no person may operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

1. the design pressure of the weakest element in the segment, determined in accordance with §§901 through 1165 of Part XIII. However, for steel pipe in pipelines being converted under §507 or uprated under Chapter 25 of this Part, if any variable necessary to determine the design pressure under the design formula (§905) is unknown, one of the following pressures is to be used as design pressure:

a. eighty percent of the first test pressure that produces yield under Section N5.0 of Appendix N of ASME B31.8, reduced by the appropriate factor in Subsection A.2.b of this Section; or

b. if the pipe is 324 mm (12¾ inches) or less in outside diameter and is not tested to yield under this Paragraph, 1,379 kPa (200 psig).

A.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§2725. Odorization of Gas

A. - C.3. ...

4. the combustible gas is hydrogen intended for use as a feedstock in a manufacturing process.

D. - G.6. ...

H. Quarterly Reports

1. Each operator shall conduct quarterly sampling of toxic or combustible gases to assure the proper concentration of odorant in accordance with this Section. Operators of master meter systems may comply with this requirement by:

a. receiving written verification from their gas source that the gas has the proper concentration of odorant; and

b. conducting periodic "sniff" tests at the extremities of the system to confirm that the gas contains odorant.

2. - 3. ...

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:447 (April 1994), LR 21:823 (August 1995), LR 24:

Chapter 29. Maintenance Requirements

§2905. Transmission Lines: Patrolling

A. - B. ...

C. Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:447 (April 1994), LR 24:

§2909. Line Markers for Mains and Transmission Lines

A. - A.2. ...

B. Exceptions for buried pipelines. Line markers are not required for the following pipelines:

1. mains and transmission lines located offshore, or at crossings of or under waterways and other bodies of water;
2. mains in Class 3 or Class 4 locations where a damage prevention program is in effect under §2715;
3. transmission lines in Class 3 or 4 locations until March 20, 1996; or
4. transmission lines in Class 3 or 4 locations where placement of a line marker is impractical.

C. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§2911. Transmission Lines: Record Keeping

Each operator shall maintain the following records for transmission lines for the periods specified:

1. the date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for as long as the pipe remains in service.
2. the date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least five years. However, repairs generated by patrols, surveys, inspections, or tests required by Chapters 27 and 29 of this Part must be retained in accordance with Subsection A.3 of this Section.

3. a record of each patrol, survey, inspection, and test required by Chapters 27 and 29 of this Part must be retained for at least five years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 24:

§2923. Distribution Systems: Patrolling, Leakage Surveys and Procedures

A. ...

1. ...

2. mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled:

- a. in business districts, at intervals not exceeding 4½ months, but at least four times each calendar year; and
- b. outside business districts, at intervals not exceeding 7½ months, but at least twice each calendar year.

B. - B.1.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 21:823 (August 1995), LR 24:

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resource Building, 625 North Fourth Street, Baton Rouge, LA at 9 a.m., April 27, 1998.

At such hearing, the commissioner of Conservation will consider evidence relative to the proposed amendments to the rules for safety standards for the transportation of natural and other gas by pipeline.

The proposed rules represent the views of the commissioner as of this date; however, the commissioner reserves the right to make additions or amendments prior to final adoption.

Comments and views regarding the proposed rules should be directed in written form to be received not later than 5 p.m., April 24, 1998. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. If accommodations are required under the Americans with Disabilities Act, contact the Pipeline Division at (504)342-5516 within 10 working days of the hearing date. Direct comments to Warren A. Fleet, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275. Reference Docket Number PL 98-025 when making inquiries about this proposed rule.

Warren A. Fleet
Commissioner

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

RULE TITLE: Natural Gas Pipeline Safety

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no increase in implementation cost or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed amendments 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 amendments will not have any costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed amendments will not have any effect on competition and employment.

Mariano G. Hinojosa
Director of Pipelines
9803#060

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Natural Resources Office of Conservation Pipeline Division

Hazardous Liquid Safety Standards
(LAC 33:V.30107, 30129, 30259, 30269, and 30300)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., Department of Natural Resources, Office of Conservation, Pipeline Division hereby proposes to amend the hazardous liquid regulations.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 3. Natural Resources

Chapter 301. Transportation of Hazardous Liquids by Pipeline

Subchapter A. General

§30107. Matter Incorporated by Reference

A. - B.5. ...

6. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

C. The full title for the publications incorporated by reference in this Part are as follows. Number in parenthesis indicated applicable editions:

1. American Gas Association (AGA): AGA Pipeline Research Committee, Project PR-3-805, *A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe* (December 1989). The RSTRENG program may be used for calculating remaining strength.

2. American Petroleum Institute (API):

a. API Specification 5L *Specification for Line Pipe* (41st ed. 1995);

b. API Specification 6D *Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)* (21st ed. 1994);

c. API Specification 1104 *Welding of Pipelines and Related Facilities* (18th ed. 1994).

3. American Society of Mechanical Engineers (ASME):

a. ASME/ANSI B16.9 *Factory-Made Wrought Steel Butt Welding Fittings* (1993);

b. ASME/ANSI B31.4 *Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols* (1992 ed. with 1994 Addenda);

c. ASME/ANSI B31.8 *Gas Transmission and Distribution Piping Systems* (1995);

d. ASME/ANSI B31G *Manual for Determining the Remaining Strength of Corroded Pipelines* (1991);

e. Boiler and Pressure Vessel Code, Section VIII, Division 1 *Pressure Vessels* (1995 with Addenda);

f. ASME Boiler and Pressure Vessel Code, Section IX *Welding and Brazing Qualifications* (1995 with Addenda).

4. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):

a. MSS SP-75 *Specification for High Test Wrought Butt Welding Fittings* (1993).

b. [Reserved]

5. American Society for Testing and Materials (ASTM):

a. ASTM Designation: A 53 *Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless* (A 53-94);

b. ASTM Designation: A 106 *Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service* (A 106-94);

c. ASTM Designation: A 333/A 333M *Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service* (A 333/A 333M-94);

d. ASTM Designation: A 381 *Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High Pressure Transmission Systems* (A 381-93);

e. ASTM Designation: A 671 *Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures* (A 671-94);

f. ASTM Designation: A 672 *Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures* (A 672-94);

g. ASTM Designation: A 691 *Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures* (A 691-93).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 20:439 (1994), LR 21:815 (August 1995), LR 24:

Subchapter B. Reporting Accidents and Safety-Related Conditions

§30129. Addressee for Written Reports

Each written report required by this Subchapter must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 2335, 400 Seventh Street SW, Washington, D.C. 20590. However, accident reports for intrastate pipelines subject to the jurisdiction of a state agency pursuant to a certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) may be submitted in duplicate to that state agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Resources Manager. Safety-related condition reports required by §30133 for intrastate pipelines must be submitted concurrently to the state agency, and if that agency acts as an agent of the secretary with respect to interstate pipelines, safety related condition reports for these pipelines must be submitted concurrently to that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:863 (August 1992), LR 20:440 (1994), amended LR 24:

Subchapter F. Operation and Maintenance
§30259. Procedural Manual for Operations, Maintenance, and Emergencies

* * *

B. Amendments. The administrator or the state agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant state procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:864 (August 1992), LR 21:819 (August 1995), LR 24:

§30269. Line Markers

A. - 1. ...

2. The marker must state at least the following on a background of sharply contrasting color:

a. the word Warning, Caution, or Danger followed by the words Petroleum (or the name of the hazardous liquid transported) Pipeline, or Carbon Dioxide Pipeline, all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch high with an approximate stroke of one-quarter inch;

b. the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:865 (August 1992), LR 24:

Chapter 303. Hazardous Liquid Pipelines Enforcement
§30300. Damage Prevention Program

A. After September 20, 1995, and except for pipelines listed in Subsection C of this Section, each operator of a buried pipeline shall carry out, in accordance with this Section, a written program to prevent damage to that pipeline by excavation activities. For the purpose of this Section, excavation activities include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means and other earth moving operations. An operator may comply with any of the requirements of Subsection B of this Section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this Section.

B. The damage prevention program required by Subsection A of this Section must, at a minimum:

1. include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located;

2. provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in

Subsection B.1 of this Section of the following, as often as needed to make them aware of the damage prevention program:

a. the program's existence and purpose; and

b. how to learn the location of underground pipelines before excavation activities are begun;

3. provide means of receiving and recording notification of planned excavation activities;

4. if the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings;

5. provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

6. provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

a. the inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

b. in the case of blasting, any inspection must include leakage surveys.

C. A damage prevention program under this Section is not required for the following pipelines:

1. pipelines located offshore;

2. pipelines to which access is physically controlled by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 24:

Comments and views regarding these proposed rules and regulations will be received until 5 p.m., April 24, 1998. Direct comments in writing to Warren Fleet, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275. Reference this proposed rule as Docket Number PL 98-026.

A public hearing will be held at 9 a.m., April 27, 1998, in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA. If accommodations are required under the Americans with Disabilities Act, contact the Pipeline Division at (504) 342-5516 within 10 days of the hearing date.

Warren A. Fleet
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Hazardous Liquid Safety Standards**

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

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

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

The proposed amendments 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 amendments will not have any costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments will not have any effect on competition and employment.

Mariano G. Hinojosa
Director of Pipelines
9803#061

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Public Safety and Corrections
Board of Pardons**

Clemency Filing and Processing
(LAC 22:V.Chapter 1)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Public Safety and Corrections, Board of Pardons hereby gives notice of its intent to amend rules and procedures relative to processing requests for clemency consideration.

**Title 22
CORRECTIONS, CRIMINAL JUSTICE
AND LAW ENFORCEMENT
Part V. Board of Pardons**

Chapter 1. Applications

§101. General

A. Any completed application will be considered for hearing by the board on the first Tuesday of each month. Should the first Tuesday fall on a legal holiday, the board will meet the following Tuesday. The board shall also meet at the discretion of the chairman to transact such other business as deemed necessary.

B. Applications must be received in the Board of Pardons office by the fifteenth of the month to be placed on the docket for consideration the following month.

C. Four members of the board shall constitute a quorum for the transaction of business, and all actions of the board shall require the favorable vote of at least four members of the board.

D. Any offender sentenced to death shall submit an application within one year from the date of the direct appeal denial.

E. Any offender sentenced to life may not apply until he has served 15 years from the date of sentence, unless he has sufficient evidence which would have caused him to have been found not guilty.

F. No application will be considered by the board until it deems the application to be complete in accordance with the following rules and procedures in Chapter 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.1 and 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:

§103. Filing Procedure

A. All Applicants

1. Every application must be submitted on the form approved by the Board of Pardons and must contain the following information:

- a. name of applicant;
- b. prison number [Department of Corrections (DOC) number];
- c. date of birth;
- d. race/sex;
- e. education (highest grade completed);
- f. age at time of offense;
- g. present age;
- h. offender class;
- i. place of incarceration (incarcerated applicant only);
- j. parish of conviction/judicial district/court docket number;
- k. offense(s) charged, convicted of or plead to;
- l. parish where offense(s) committed;
- m. date of sentence;
- n. length of sentence;
- o. time served;
- p. prior parole and/or probation;
- q. when and how parole or probation completed;
- r. prior clemency hearing/recommendation/approval;
- s. reason for requesting clemency;
- t. relief requested and narrative detailing the events surrounding the offense;

u. institutional disciplinary reports (incarcerated applicants only); total disciplinary reports, number within the last 12 months; nature and date of last violation; and custody status.

2. The application shall be signed and dated by applicant and shall contain a prison or mailing address and home address.

3. An application must be completed. If any required information does not apply, the response should be "NA."

B. In addition to the information submitted by application, the following required documents must be attached as they apply to each applicant:

1. Incarcerated Applicants. Any applicant presently confined in any institution must attach a current master prison record and time computation/jail credit worksheet and have the signature of a classification officer verifying the conduct of the applicant as set out in §103.A.1.u and a copy of conduct report. Applicants sentenced to death must attach proof of direct appeal denial.

2. Parolees. Applicants presently under parole supervision or who have completed parole supervision must attach a copy of their master prison record or parole certificate.

3. Probationers. Applicants presently under probation supervision or who have completed probationary period must attach a certified copy of sentencing minutes or copy of automatic first offender pardon.

4. First Offender Pardons [R.S. 15:572 (B)]. Applicants who have received an Automatic First Offender Pardon must attach a copy of the Automatic First Offender Pardon.

C. No additional information or documents may be submitted until applicant has been notified that he/she will be given a hearing unless applicant has a life sentence and has served less than 15 years and has documentation proving innocence. The Board of Pardons will not be responsible for items submitted prior to notification that a hearing will be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:

§105. Discretionary Powers of the Board

A.1. The Board of Pardons, at its discretion, may deny any applicant a hearing for any of the following reasons:

- a. serious nature of the offense;
- b. insufficient time served on sentence;
- c. insufficient time after release;
- d. proximity of parole/good time date;
- e. institutional disciplinary reports;
- f. probation/parole—unsatisfactory/violated;
- g. past criminal record; or
- h. any other factor determined by the board.

2. However, nothing in Chapter 1 shall prevent the board from hearing any case.

B. Any applicant denied under Chapter 1 shall be notified, in writing, of the reason(s) for denial and thereafter may file a new application two years from date of the letter of denial. Any applicant with a life sentence denied after August 15, 1997 may reapply six years after the initial denial; three years after the subsequent denial; and every two years thereafter.

C. Any fraudulent documents or information submitted by applicant will result in an automatic denial by the board and no new application will be accepted until four years have elapsed from the date of letter of denial. Any lifer denied because of fraudulent documents may reapply 10 years from the date of letter of initial denial; seven years if subsequent denial; and six years for denials thereafter.

D. In any matters not specifically covered by LAC 22:V.Chapter 1, the board shall have discretionary powers to act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:

§107. Contact with the Board of Pardons

A. Contact with the Board of Pardons or any member is prohibited except by appearing/testifying at a public hearing or by written letter addressed to the Board of Pardons.

B. If a board member is improperly contacted, he/she must immediately notify the individual that the contact is illegal. The letter must be accompanied by a copy of R.S.15:573.1, and the contact must be reported to the other board members.

C. Any prohibited contact after an individual has been informed of the prohibition as provided in §107.B shall be

fined not more than \$500 or imprisoned for not more than six months or both.

D. All letters in favor of pardon, clemency, or commutation of sentence are subject to public inspection. Exceptions to §107 are:

1. letters from any victim of a crime committed by the applicant being considered for pardon, clemency, or commutation of sentence, or any person writing on behalf of the victim;

2. any letters written in opposition to pardon, clemency, or commutation of sentence.

E. All letters written by elected or appointed public officials in favor of or opposition to pardon, clemency, or commutation of sentence received after August 15, 1997 are subject to public inspection and shall be recorded in a central register maintained by the board. The register shall contain the name of the individual whose pardon, clemency, or commutation of sentence is subject of the letter, the name of the public official who is the author of the letter and the date the letter was received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:

§109. Hearing Granted

A. After notice to an applicant that a hearing has been granted the applicant must provide the Board of Pardons office with proof of advertisement within 90 days from the date of notice to grant a hearing. Advertisement must be published in the official journal of the parish where the offense occurred. This ad must state:

"I, (applicant's name), DOC Number, have applied for clemency"

and must be published for three days within a 30-day period without cost to the Department of Public Safety and Corrections, Corrections Services, Board of Pardons.

B. Applicant may submit additional information, (e.g., letters of recommendation and copies of certificates of achievement and employment/residence agreement).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1063 (December 1990), amended LR 24:

§111. Notice of Public Hearing Dates

A. After receipt of all documents required by §§103 and 109.A and the clemency investigation from the appropriate probation and parole district, the board shall set the matter for public hearing.

B. At least 30 days prior to public hearing date, the board shall give written notice of the date, time, and place to the following:

1. the district attorney and sheriff of the parish in which the applicant was convicted; and, in Orleans Parish, the superintendent of police;

2. the applicant;

3. the victim who has been physically or psychologically injured by the applicant (if convicted of that offense), and the victim's spouse or next of kin, unless the injured victim's

spouse or next of kin advises the board, in writing, that such notification is not desired;

4. the spouse or next of kin of a deceased victim when the offender responsible for the death is the applicant (if convicted of that offense), unless the spouse or next of kin advises the board, in writing, that such notification is not desired;

5. the Crime Victims Services Bureau of the Department of Public Safety and Corrections; and

6. any other interested person who notifies the Board of Pardons, in writing, giving name and return address.

C. The district attorney, injured victim, spouse, or next of kin, and any other persons who desire to do so shall be given a reasonable opportunity to attend the hearing. The district attorney or his representative, victim, victim's family, and a victim advocacy group, may appear before the Board of Pardons by means of telephone communication from the office of the local district attorney.

D. Only three persons in favor, to include the applicant, and three in opposition, to include the victim/victim's family member, will be allowed to speak at the hearing. However, there is no limit on written correspondence in favor of and/or opposition to the applicant's request.

E. If an applicant is released from custody and/or supervision prior to public hearing date, the case will be closed without notice to the applicant. Applicant may reapply two years from the date of release.

F. Applicant's failure to attend and/or notify the Board of Pardons office of his/her inability to attend the hearing will result in an automatic denial. The applicant may reapply two years from the date of scheduled hearing. Lifers who fail to attend and/or advise of inability to attend may reapply in six years if it is his/her initial hearing, three years if subsequent hearing date, and two years thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4 and 15:574.12(G) and R.S. 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Correction, Board of Pardons, LR 16:1063 (December 1990), amended LR 24:

§113. Denials by Board after Public Hearing

A. The board shall notify the applicant of the denial. Applicant may submit a new application two years after the date of letter of denial. Any applicant serving life may apply six years after initial denial, three years after subsequent denial and thereafter every two years.

B. The board shall terminate hearing should the applicant become disorderly, threatening, or insolent. Any hearing terminated due to applicant's disorderly, threatening, or insolent behavior is an automatic denial and the applicant may reapply four years from the date of hearing except those serving life sentence who may reapply 10 years from the date of initial hearing termination, seven years from the subsequent hearing termination, and six years from hearing termination thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:

§115. Denial/No Action Taken by Governor after Favorable Recommendation

A. The board shall notify the applicant after its receipt of notification that favorable recommendation was denied or no action was taken by the governor. Applicant may submit a new application one year from the date of the letter of denial or notice of no action.

B. An applicant who has been paroled, released under good time parole supervision, or released from sentence within one year of the date of letter of denial or notice of no action by the governor, may submit a new application two years after the date of release from confinement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:

§117. Governor Grants

The Office of the Governor will notify the applicant if any clemency is granted. Applicant may submit a new application for additional relief four years from the date of notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15.572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:

Interested persons may submit written comments to Sally L. McKissack, Chairman, Louisiana Board of Pardons, Box 94304, Baton Rouge, LA 70804-9304. Comments will be accepted through the close of business, 4:30 p.m., April 1, 1998.

Sally L. McKissack
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Clemency Filing and Processing

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of proposed rules and procedures will have no immediate cost/savings to state or local governmental units in that current staff will absorb the additional workload. An additional clerical position has been requested through the normal budget process and will increase the number of classified positions from two to three with an increase in salaries and related benefits. Cost associated with the requested position is estimated at \$11,990 in salaries and \$2,158 in related benefits.
- 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 associated with these rules.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups associated with these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Proposed rules will not effect competition and employment.

Richard Stalder
Secretary
9803#039

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Family Independence Work Program
(FIND Work)—Organization, Activities
and Services (LAC 67:III.2901 and 2913)

The Department of Social Services, Office of Family Support proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 5, Family Independence Work Program, known in Louisiana as "FIND Work" and formerly known as "Project Independence."

Under the authority of Public Law 104-193 and R.S. 46:231.10, the agency proposes to change the amount allowed per participant per fiscal year for items deemed necessary to facilitate a participant's entry into employment. The funds used to provide such items has been set at a maximum of \$100 per participant per fiscal year since October 1990. This proposed rule will increase the amount allowed to \$150 per participant per fiscal year. Section 2901 is also being updated as the authority to administer the program has changed.

**Title 67
SOCIAL SERVICES
Part III. Office of Family Support
Subpart 5. Family Independence Work Program (FIND Work)
Chapter 29. Organization
Subchapter A. Designation and Authority of State Agency**

§2901. General Authority

The Family Independence Work Program (FIND Work) is established in accordance with state and federal laws to assist recipients of Family Independence Temporary Assistance (FITAP) to become self-sufficient by providing needed employment-related activities and support services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 19:504 (April 1993), LR 24:

Subchapter C. Activities and Services

§2913. Support Services

A. - 3.a. ...

b. Payments not to exceed a combined total of \$150 per fiscal year may be made for certain costs deemed necessary such as eyeglasses, hearing aids and other small medical appliances, uniforms, tools and training materials, medical exam not provided by Medicaid or other resource, placement

test fees and other course prerequisite costs, safety equipment and transportation related expenses.

c. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), amended by the Office of the Secretary and Office of Family Support, LR 24:356 (February 1998), amended by the Office of Family Support, LR 24:

Interested persons may submit written comments by April 28, 1998 to Vera W. Bakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA, 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on April 28, 1998 at 9 a.m. at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA. 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 (504) 342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: FIND Work Program**

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

Implementation of this rule will increase state agency costs for a FIND Work participant's "other supportive services" for fiscal years 98/99, 99/00, and 00/01 by approximately \$105,437. These funds are available from Louisiana's Temporary Assistance to Needy Families (TANF) Block Grant. Policy and forms revisions will also be required and these costs will be within the normal budget constraints. There are no anticipated costs or savings to local governmental units.

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

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

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

Each FIND Work participant will be allowed \$150 per state fiscal year for "other supportive services" such as uniforms, tools and safety equipment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed increase in other supportive services may help to facilitate a participant's entry into employment.

Vera W. Blakes
Assistant Secretary
9803#063

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Social Services Office of the Secretary Bureau of Licensing

Class "A" Child Day Care (LAC 48:I:Chapter 53)

The Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to amend the Louisiana Administrative Code, Title 48, Part I, Subpart 3, Licensing and Certification.

This rule is mandated by R.S. 46:1401-1425.

These standards are being revised to supersede any previous regulations heretofore published.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 53. Day Care Centers

(Editor's Note: Rules promulgated in the April 20, 1994 *Louisiana Register*, as §§5301-5325 are being repealed in their entirety and replaced by the following §§5301-5329.)

§5301. Purpose

It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to insure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to insure protection of all individuals under care in child care facilities and placement agencies and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate. This Chapter shall not give the Department of Social Services jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any curriculum or instruction of a school or facility sponsored by a church or religious organization so long as the civil and human rights of the clients and residents are not violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5303. Authority

A. Legislative Provisions

1. The state of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child day care centers.

2. The licensing authority of the Department of Social Services is established by R.S. 46:1401-1425 (Act 367 of 1956 and amended by Act 152 of 1962, Act 241 of 1968, Act 290 of 1976, Act 678 of 1977, Act 409 of 1978, Act 286 of

1985, and Act 1463 of 1997) making mandatory the licensing of all child care facilities and child placing agencies, including child day care centers. A child "day care center" is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision and guidance of seven or more children under the age of 18 years not related to the caregiver and unaccompanied by parent or guardian, on a regular basis for at least 20 hours in a continuous seven-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall be known as a full time day care center. A day care center that remains open after 9 p.m. shall meet the appropriate regulations established for nighttime care.

B. Penalties

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency, shall be licensed.

2. The law provides a penalty for operation of a center without a valid license. The penalty for operation without a valid license is a fine of not less than \$75 nor more than \$250 for each day of operation without a license.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services through its duly authorized agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the Department, and without previous notice all child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401-1425).

2. Whenever the Department is advised or has reason to believe that any person, agency or organization is operating a nonexempt day care facility without a license or provisional license, the Department shall make an investigation to ascertain the facts.

3. Whenever the Department is advised or has reason to believe that any person, agency or organization is operating in violation of the Child Day Care Center Class "A" Minimum Standards, the Department shall complete a complaint investigation. All reports of mistreatment of children coming to the attention of the Department of Social Services will be investigated.

D. The Louisiana Advisory Committee

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class "A" facilities ("New" meaning the first regulations written after Act 286 of 1985.);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, rules, and regulations for Class "A" facilities at least every three years;

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class "A" license.

2. The Committee is composed of 19 voting members, appointed by the Governor, including provider and consumer

representation from all types of child care services, the educational and professional community and the Director of the Bureau of Licensing who serves as an ex-officio member.

E. Waivers. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or children are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5305. Definitions

Anniversary—center's licensure year, determined by the month in which the initial license was issued to the center and in which the license is eligible for renewal each year.

Bureau—the Bureau of Licensing of the Department of Social Services.

Capacity—the number of children the center is licensed to care for at any given time based on usable indoor and outdoor square footage as determined by the Bureau.

Center—a child day care center/facility as defined in §5303.A.2.

Center Staff—all full or part-time employees and volunteers who perform routine services for the day care center and have direct or indirect contact with children at the center. Center staff includes the Director, child care staff, and any other employees of the center such as the cook, housekeeper, driver, substitutes, and volunteers.

Change of Location—center moves from one location to another.

Change of Ownership—transfer of ownership to someone other than the owner listed on the initial application. Ownership of the center business, not the building, determines the owner. Sale of a corporation also constitutes a change of ownership.

Clock Hour—involvement or participation in a learning situation for 60 minutes.

Contract Person—a third party with whom parents have a written agreement.

Department—the Department of Social Services of the State of Louisiana.

Direct Supervision—visual contact at all times.

Director:

1. *Executive Director*—the owner or administrator. If on-site and responsible for the management, administration and supervision of the center, the Executive Director is also the Center Director. If not on-site or not functioning as Center Director, the Executive Director maintains responsibility for the management, administration and supervision of the center(s) through a Center Director or Director Designee.

2. *Center Director*—the on-site staff who is responsible for the day-to-day operation of the center as recorded with the Bureau of Licensing. For the purpose of these regulations, the term *Director* means Center Director or Director Designee, if applicable.

3. *Director Designee*—the on-site individual appointed by the Director when the Director is not an on-site employee at the licensed location. This individual shall meet Director qualifications.

Discipline—the ongoing positive process of helping children develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

Documentation—written evidence or proof, signed and dated by parties involved (Director, parents, staff, etc.), on site and available for review.

Existing Center—a center with a valid license prior to (Effective date to be determined upon promulgation of final rule).

Group (or Unit)—the number of children who share a common indoor play space and relate to one primary staff (who may be assisted by others) on a consistent or daily basis.

Montessori School—for licensing purposes, a facility accredited as a Montessori School by the Board of Elementary and Secondary Education under R.S. 17:3401 et seq.

Owner or Provider—a public or private organization or individual who delivers day care service for children.

Parent—the parent(s) or guardian with legal custody of the child.

Posted—prominently displayed in a conspicuous location in an area accessible to and regularly used by parents.

Shall or Must—mandatory.

Should—urged, advised or may.

Staff-in-Charge—the on-site staff appointed by the Director as responsible for supervising the operation of the center during the temporary absence of the Director.

Temporary Absence—absence for errands, conferences, etc.

Volunteer—nonpaid staff in one of the following categories:

1. *Nonessential Volunteer*—an individual who is not necessary to the operation of the center and is not counted in the child/staff ratio, but works in the center on a regular basis.

2. *Essential Volunteer*—an individual who is necessary to the operation of the center, is considered staff and is counted in the child/staff ratio.

3. *Luxury Volunteer*—an individual who observes the operation of the center for learning purposes or volunteers his/her time to assist the center and has no direct control over children (never left alone with children), is not necessary to the operation of the center and works on an irregular basis.

Water Activity—a water-related activity where children, under adult supervision, are in, on, near or immersed in a body of water such as swimming pools, wading pools, water parks, lakes, rivers or beaches, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5307. Procedures

A. Initial Application

1. Anyone applying for a license after the effective date of these standards shall meet all of the requirements herein.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. To do so, the following steps should be followed.

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area where you are planning to locate. Standards from Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; and City Fire Department (if applicable) should be obtained.

b. After securing building, obtain an application form issued by:

Department of Social Services
 Bureau of Licensing
 P. O. Box 3078
 Baton Rouge, LA 70821-3078
 Phone: (504) 922-0015
 FAX: (504) 922-0014

c. The completed application shall indicate Class "A" license. Anyone applying for State or Federal funding shall apply for a Class "A" license. Licensure fees are required to be paid by all centers. A Class "A" license may not be changed to a Class "B" license if revocation procedures are pending.

d. After the center's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a center:

- i. Office of Public Health, Sanitarian Services;
- ii. Office of the State Fire Marshal, Code Enforcement and Building Safety;
- iii. Office of City Fire Department(if applicable);
- iv. Zoning Department(if applicable);
- v. City or Parish Building Permit Office.

e. After the application has been received by the Bureau of Licensing, the Bureau will request the Office of State Fire Marshal, Office of City Fire Department (if applicable), Office of Public Health and any known required local agencies to make an inspection of the location, as per their standards. However, it is the applicant's responsibility to obtain these inspections and approvals. A Licensing Specialist will visit the center to conduct a licensing survey.

f. A license will be issued on an initial application when the following items have been met and written verification is received by the Bureau of Licensing:

- i. fire approval (state and city, if applicable);
- ii. health approval;
- iii. zoning (if applicable);
- iv. full licensure fee paid;
- v. director meets qualifications;
- vi. three positive references on Director;
- vii. Licensure survey verifying substantial compliance.

3. When a center changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in §5307.A.2.f shall be

resubmitted, except references and Director qualifications if the Director remains the same.

4. When a center changes ownership, a new application and fee shall be submitted. All approvals listed in §5307.A.2.f shall be current. Documentation is required from the previous owner assuring change of ownership, i.e., letter from previous owner, copy of Bill of Sale or a lease agreement.

5. All new construction or renovation of a center requires approval from agencies listed in §5307.A.2.d and the Bureau of Licensing.

6. The Bureau is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked due to center's failure to maintain compliance with minimum standards.

7. A license is not transferable to another person or location.

8. If a Director or member of his immediate family has had a previous license revoked, refused or denied, upon re-application, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal, or denial have been corrected and the Director and/or center is in substantial compliance with all minimum standards.

B. Fees

1. An initial application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee which is due prior to licensure of center. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all Changes of Ownership. All fees shall be paid by certified check or money order only and are nonrefundable.

2. Annual licensure fees are required prior to issuance or renewal of the license. License fee schedules (based on capacity) are listed below:

License Fee Schedules	
Capacity	Fee
15 or fewer	\$25
16 - 50	\$100
51 - 100	\$175
101 or more	\$250

3. Other Licensure Fees

a. Twenty-five dollar replacement fee for any center replacing a license when changes to the license are requested by the Director, i.e., change in capacity, name change, age range change. (There is no processing charge when the request coincides with regular renewal of license.)

b. Five-dollar processing fee for issuing a duplicate license with no changes.

C. Relicensing

1. The relicensing survey is similar to the original licensing survey. Documentation of previous 12 months' activity shall be available for review. The Director will have an opportunity to review the survey deficiencies (if any).

2. A license is issued for a period of up to one year based upon center's compliance with minimum standards. Before expiration of the license, reinspections by the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; City Fire (if applicable) and the Bureau of Licensing shall be required.

3. If the survey reveals that the center is not substantially meeting minimum requirements, a recommendation will be made that the license be revoked or not renewed.

4. The Bureau shall be notified prior to making changes which might have an effect upon the license, i.e., age range of children served, usage of indoor and outdoor space, Director, hours/months/days of operation, ownership, location, transportation, etc.

D. Denial, Revocation or Nonrenewal of License. An application for a license may be denied, or a license may be revoked, or renewal thereof denied, for any of the following reasons:

1. violation of any provision of R.S. 46:1401-1425 or failure to meet any of the minimum standards, rules, regulations or orders of the Department of Social Services promulgated thereunder;

2. cruelty or indifference to the welfare of the children;

3. conviction of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim, as shown by a certified copy of the record of the court of conviction, of the applicant:

a. or, if the applicant is a firm or corporation, any of its board members or officers;

b. or of the person designated to manage or supervise the center;

4. if the Director of the center is not reputable;

5. if the Director or a member of the staff is temperamentally or otherwise unsuited for the care of the children in the center;

6. history of noncompliance;

7. failure of the owner of the center to hire a qualified Director;

8. disapproval from any agency whose approval is required for licensure;

9. nonpayment of licensure fee and/or failure to submit application for renewal prior to the expiration of the current license;

10. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse and/or neglect if the owner is responsible or if the employee who is responsible remains in the employment of the center;

11. the center is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;

12. any act of fraud such as falsifying or altering documents required for licensure;

13. center refuses to allow the Bureau to perform mandated duties, i.e., denying entrance to the center, lack of cooperation for completion of duties, etc.

E. Appeal Procedure. If the license is refused, revoked or denied because the center does not meet minimum requirements for licensure, the procedure is as follows.

1. The Department of Social Services Bureau of Licensing, shall advise the Director by certified letter of the reasons for refusal, revocation or denial and right of appeal.

2. The Director may appeal this decision by submitting a written request with the reasons to the Secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, Box 2944, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 30 days of the Director's receipt of the above notification in §5307.E.1.

3. The Bureau of Appeals shall set a hearing to be held within 30 days after receipt of such a request.

4. An Appeals Hearing Officer shall conduct the hearing. Within 90 days after the date the appeal is filed, the Hearing Officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the appeal is denied, the center shall terminate operation immediately.

5. If the center continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the center is located for injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5309. General Requirements

A. The Director shall be responsible for ensuring that minimum licensing requirements are met.

B. A current child day care license shall be on display, except for church affiliated centers (R.S. 46:1408(D)) that choose to keep the license on file and available upon request.

C. A center shall maintain in force at all times current commercial liability insurance for the operation of a center and vehicle (if transportation is provided) to ensure medical coverage for children in the event of accident or injury.

1. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The center is responsible for payment of medical expenses of a child injured while in center care. Parents shall not be required to waive the center's responsibility.

2. Documentation shall consist of the insurance policy or current binder that includes the name of the insurance company, policy number, period of coverage and explanation of the coverage.

D. A center shall in all respects meet the requirements of the state and local ordinances governing sanitation (Office of Public Health, Sanitarian Services). Thereafter, a yearly sanitation inspection and approval from the Office of Public Health, Sanitarian Services are required. Documentation of such approval shall be on file.

E. A center shall in all respects meet the requirements of the fire prevention and safety authorities who have jurisdiction over it, i.e., the Office of State Fire Marshal and City Fire Department (if applicable). Thereafter, a yearly safety inspection and approval from the Office of State Fire Marshal and City Fire Department (if applicable) are required. Documentation of such approval shall be on file.

F. A center shall in all respects meet the requirements of the local zoning ordinance, if applicable. Documentation of such approval shall be on file.

G. Injuries, accidents, illnesses or unusual occurrences in behavior shall be documented. At a minimum, documentation shall address who, what, when, where and how.

H. A daily attendance log for children, completed by the parent or center staff, including the time of arrival and departure of each child and the name of the person to whom the child was released shall be maintained.

I. A daily attendance log for staff to include the time of arrival and departure shall be maintained.

J. A center shall maintain a record of all field trips taken to include date and destination, list of passengers and method of transportation.

K. The center shall have an individual immediately available in case of emergency to ensure adequate child/staff ratios and supervision. The name and telephone number of the emergency person shall be posted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5311. Policies and Procedures Related to Children

A. Required Written Policies and Procedures

1. The center shall have written policies and procedures approved by the Director which address the following areas:

- a. admission;
- b. dismissal;
- c. medication;
- d. transportation;
- e. water activities;
- f. third party release;
- g. complaint procedure;
- h. open door policy;
- i. photographing children;
- j. discipline;
- k. abuse and/or neglect;
- l. nondiscrimination; and
- m. confidentiality.

2. The center shall also have a written description of its program, fees (if any), annual and daily schedule.

3. The center's written policies shall be available for review by parents, staff and state agencies.

B. Daily Program

1. There shall be a posted schedule of the day's plan of activities, allowing for flexibility and change. The program of activities shall be adhered to with reasonable closeness, but shall accommodate and have due regard for individual needs

and differences among the children. The program shall provide time and materials for both vigorous and quiet activity for children to share or to be alone, indoor and outdoor play and rest. Regular time shall be allowed for routines such as washing, lunch, rest, snacks and putting away toys. Active and quiet periods shall be alternated so as to guard against over stimulation of the child.

2. Children 5 years and younger shall have a daily rest period of at least one hour.

3. While awake, infants and toddlers shall not remain in a crib/baby bed, swing, highchair, carrier, playpen, etc. for more than 30 consecutive minutes.

C. Discipline. Each center shall establish a policy in regard to methods of discipline. This written, prominently posted policy shall clearly state all types of positive discipline that are used and the following methods of discipline that are prohibited.

1. No child shall be subject to physical punishment, corporal punishment, verbal abuse or threats. Cruel, severe, unusual or unnecessary punishment shall not be inflicted upon children. Derogatory remarks shall not be made in the presence of children about family members of children in care or about the children themselves. Any form of punishment that violates the spirit of this standard of discipline, even though it may not be specifically mentioned as forbidden, is prohibited.

2. No child or group of children shall be allowed to discipline another child.

3. When a child is removed from the group for disciplinary reasons, he/she shall never be out of the sight of a staff member.

4. No child shall be deprived of meals or snacks or any part thereof for disciplinary reasons.

D. Abuse and Neglect. As mandated reporters, all center staff shall report any suspected abuse and/or neglect of a child in accordance with R.S. 14:403 to the local Child Protection Agency. This statement as well as the local Child Protection Agency telephone number shall be posted.

E. Complaint Procedure. Parents shall be advised of the licensing authority of the Bureau and shall be given the current telephone number and address of the Bureau and advised that they may call or write the Bureau should they have significant, unresolved licensing complaints. The current telephone number and address of the Bureau shall be posted in a conspicuous location in an area accessible to parents.

F. Open Door Policy. Parents shall be informed that they are welcome to visit the center anytime during regular hours of operation as long as their child is enrolled. The written policy shall be posted.

G. Nondiscrimination. Discrimination by child day care centers on the basis of race, color, creed, sex, national origin, handicapping condition or ancestry is prohibited. The written policy shall be posted.

H. Confidentiality and Security of Files

1. The center shall have written procedures for the maintenance and security of children's records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released.

Records shall be the property of the center, and the director, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. The center shall maintain the confidentiality of all children's records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly, or indirectly, to any unauthorized person.

3. The center shall obtain written, informed consent from the parent prior to releasing any information or photographs from which the child might be identified, except for authorized state and federal agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5313. Transportation

A. A center that provides transportation of children assumes additional responsibility and liability for the safety of the children.

B. Transportation Plan

1. If transportation is not provided, there shall be a written notice to that effect.

2. If transportation is provided, even on an irregular basis, the center shall have written policies that conform to §5313.C.1.a-m and a written transportation plan that includes the following:

- a. type of transportation provided, i.e., to and from home, to and from school, to and from swimming or dancing lessons, field trips, etc.;
- b. geographical areas served;
- c. time schedule of the services;
- d. Fees, if any, for transportation services.

C. Transportation Furnished by Center

1. When transportation is provided, the Director and center's written policies shall ensure that:

a. transportation arrangements conform to state laws, including seat belts and child restraints;

Note: For additional information regarding state laws, contact Office of Public Safety.

b. at least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device and child/staff ratio is met in the vehicle;

c. at least one staff in each vehicle shall be currently certified in CPR and trained in pediatric first aid;

d. children are under the direct supervision of staff at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time while transporting children;

e. each child shall board or leave the vehicle from the curb side of the street and/or shall be safely escorted across the street;

f. each child is delivered to a responsible person authorized in writing by the parent;

g. a designated staff person shall be present when the child is delivered to the center;

h. good order shall be maintained on the vehicle;

i. the driver shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle and all children were picked up and dropped off at the correct locations;

j. the vehicle shall be maintained in good repair;

k. the use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited;

l. children shall not be transported in the back of a pickup truck;

m. the number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

2. All drivers and vehicles shall be covered by liability insurance as required in §5309.C.

3. The driver shall hold a valid appropriate Louisiana driver's license.

4. Each driver or attendant shall be provided with a current master transportation list including each child's name, pick up and drop off locations and authorized persons to whom child may be released.

5. The driver or attendant shall maintain a daily attendance record.

6. The vehicle shall have evidence of a current safety inspection.

7. There shall be first aid supplies in the vehicle.

8. There shall be information in each vehicle identifying the name of the Director and the name, telephone number and address of the center for emergency situations.

D. Field Trips

1. When transportation is provided by the center (owned and nonowned vehicle), the procedures outlined in §5313.C shall be followed.

2. When transportation is provided by parents, the Director and center's written policies shall ensure that:

a. transportation arrangements conform to state laws including seat belts and child restraints;

b. the driver has a valid driver's license and is covered by liability insurance;

c. a planned route shall be provided to each driver and a copy maintained in the center;

d. there shall be information in the center and each vehicle listing the names of children and staff in each vehicle (going and returning);

e. there shall be information in each vehicle identifying the name of the Director and the name, telephone number and address of the center for emergency situations;

f. first aid supplies shall be provided during field trips;

g. the use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

3. Whether transportation for field trips is provided by the center, parents, or an outside source, there shall be signed parental authorization for each child to leave the center and to be transported in the vehicle.

E. Transportation by Contract. When the center contracts with an outside source for transportation, there shall be an agreement on file signed and dated by the Director and a representative of the transportation agency stating that all rules for transportation shall be followed as stated in §5313.C. The center shall select a transportation agency with a good reputation and reliable drivers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5315. Admission of Children

A. Prior to admission, the Director, in consultation with the parent, shall determine that individual needs of each child can adequately be met by the center's program and facilities.

B. Admission of children shall include an interview with the parent or guardian to:

1. provide the center's written program and policies; the center shall have documentation that parents have reviewed or been given a written description of the center's program and policies;

2. secure necessary information about the child to include the following:

a. all information as required on the Child's Information Form (Mastercard);

b. an immunization record signed/stamped by a physician or Designee on each child, including school age children, verifying the child has had or is in the process of receiving all immunizations appropriate to his/her age as required by the Office of Public Health:

i. these documents shall be part of the child's records; when the child leaves the center, these documents shall be returned to the parent;

ii. if a parent chooses for his/her child not to receive immunizations for personal or religious reasons, documentation from the parent shall be on file;

3. obtain signed agreements between the center and the parent for each child giving permission to:

a. care for the child during the time he/she is in the center or on center-sponsored activities;

b. administer and/or secure emergency medical treatment;

c. release the child to any person(s) listed by the parent including the noncustodial parent(s), or any other child care facilities, transportation services, or contract person(s). A child shall never be released to anyone unless authorized in writing by the parent;

d. give medication and/or special medical procedures as specified in §5325.B.2, if applicable;

e. transport the child to and from home, to and from school and on center-sponsored field trips, etc., if applicable;

f. participate in any water activities, if applicable;

g. participate in off-site, "away from center" activities and field trips, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5317. Required Staff

A. Each center shall have a qualified Director who is an on-site employee at the licensed location and is responsible for planning, managing, and controlling the center's daily activities and ensuring that minimum licensing requirements are met. If the Director is responsible for more than one center, there shall be a Director Designee, who meets Director qualifications, responsible for the operation of the other center(s).

B. When the Director is not on the premises due to temporary absence, there shall be an individual appointed as Staff-in-Charge. This staff shall be given the authority to respond to emergencies, inspections/inspectors, and parental concerns.

C. If the number of children in care exceeds 42, the Director's duties shall consist only of performing administrative functions.

D. There shall be regularly employed staff who are capable of fulfilling job duties of the position to which they are assigned.

E. There shall be adequate provisions for cooking and housekeeping duties, except for those centers approved by the Office of Public Health, Sanitarian Services for having food service from an approved catering source. These duties shall not interfere with required supervision of children or required child/staff ratios.

F. If day and night care are offered, there shall be separate shifts of staff. No employee may work day and night shifts consecutively.

G. There shall be provisions for substitute staff who are qualified to fulfill duties of the position to which they are assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5319. Staff Qualifications

A. Director:

1. shall be at least 21 years of age;

2. shall have documentation of at least one of the following upon hire date as Director:

a. diploma from a post secondary technical early childhood education training program approved by the Board of Elementary and Secondary Education, or child care education certificate program, plus one year of experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

b. three years' of experience as a director or staff in a licensed child care center, or comparable setting, subject to approval by the Bureau; plus six credit hours in child care, child development, or early childhood education. Thirty "clock hours" approved by the Bureau may be substituted for each three credit hours. Up to three credit hours or 15 clock hours may be in Management/Administration education;

c. an Associate of Arts degree in child development or a closely related area, and one year of experience in a licensed center, or comparable setting, subject to approval by the Bureau;

d. a Child Development Associate Credential, (CDA), and one year of experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

e. a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education, and one year of experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

f. a National Administrator Credential as awarded by the National Child Care Association, and two years' experience in a licensed child care center, or comparable setting, subject to approval by the Bureau;

3. documentation of the above qualifications shall be available at the center;

4. documentation of appointment and qualifications of Director Designee, if applicable, shall be available at the center;

5. directors hired prior to the effective date of these regulations shall come into compliance with these requirements within one year.

B. Child Care Staff

1. Child care staff shall be age 18 years or older. The center may, however, include in the staff-child ratio, a person 16 or 17 years old who works under the direct supervision of a qualified adult staff. No one under age 16 shall be used as child care staff.

2. Staff-in-Charge shall be at least 21 years of age.

C. All Center Staff

1. Center staff shall be known in the community to be of good reputation as verified by documented reference checks. There shall be on file three letters of reference or documentation, signed and dated, that at least three nonrelated reference checks have been contacted by the Director prior to employment.

2. A criminal record check shall be requested by the Director prior to the employment of any center staff.

a. A criminal record clearance is not transferrable from one employer to another.

b. No staff with a criminal conviction of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim shall be employed in a Class "A" day care center unless approved in writing by a District Judge of the parish and the local District Attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the Bureau.

3. Health Requirements

a. Upon offer of employment all center staff shall be required to obtain a statement of good health signed by a

physician or designee. Health statement dated within three months prior to offer of employment or within one month after date of employment is acceptable. Health statement is required every three years.

b. At the time of employment, the individual shall have no evidence of active tuberculosis. Tuberculin test result dated within one year prior to offer of employment is acceptable. Staff shall be retested on time schedule as mandated by the Office of Public Health. For additional requirements, refer to Chapter II of State Sanitary Code.

c. Center staff shall not remain at work if he/she has any sign of a contagious disease as stated in §5325.B.5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5321. Staff Development

A. Required Written Policies. The Director shall plan and implement written policies relating to staff development. The written policies shall describe plans for orientation, in-service training and annual continuing education.

B. Orientation Training

1. Within one week of employment and prior to having sole responsibility for a group of children, each staff member, including substitutes, shall receive orientation training to include:

a. center policies and practices including health and safety procedures;

b. emergency and evacuation plan;

c. supervision of children;

d. discipline policy;

e. job description;

f. individual needs of the children enrolled;

g. detecting and reporting child abuse and neglect;

h. current State Class "A" Minimum Licensing Standards;

i. confidentiality of information regarding children and their families.

2. This training shall be followed by four days of supervised work with children.

3. Documentation shall consist of a statement/checklist in the employee record signed and dated by the employee and Director attesting to having received such orientation training and four days of supervised work with children.

C. In-Service Training

1. The Director shall conduct, at a minimum, one staff training session each three-month quarter. Documentation shall consist of dated minutes of the training sessions including training topics and signatures of all staff in attendance.

2. All staff, including substitutes, shall annually review center policies and practices, health and safety procedures, emergency and evacuation plan, supervision of children, discipline policy, job description, individual needs of the children enrolled, current State Class "A" Minimum Licensing Standards, detecting and reporting child abuse and neglect, and

confidentiality of information regarding children and their families. Documentation shall consist of a signed and dated statement/checklist identifying that all required topics were reviewed.

D. Continuing Education. The Director shall provide opportunities for continuing education of staff through attendance at child care workshops or conferences to enhance the ability of staff to meet the individual needs of all children enrolled.

1. The child care staff shall obtain 12 clock hours of training per center's anniversary year in job-related subject areas. This training shall be approved by the Department of Social Services.

2. Cooks, drivers, and other ancillary personnel who do not have supervisory or disciplinary authority over children shall complete at least three clock hours of training in job related topics per center's anniversary year.

3. Substitutes/volunteers working 10 days or less in a 12-month period are not required to meet continuing education requirements as described in §5321.D.1.

4. Documentation shall consist of attendance records and certificates received by staff.

E. CPR and First Aid

1. There shall be a minimum of at least two staff on the premises and accessible to the children at all times with current approved Infant/Child/Adult certification in CPR. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in each building and on each floor of the center.

2. There shall be a minimum of at least 50 percent of all staff on the premises and accessible to the children at all times with documented current approved pediatric first aid training. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in each building and on each floor of the center.

3. Off-site activities, i.e., field trips, shall require at least one staff in attendance and accessible to children at all times to have documented current certification/training in Infant/Child/Adult CPR and pediatric first aid.

4. Wading/swimming pools, or other water activities shall require at least one staff, volunteer, or other supervising adult to be certified/trained in Infant/Child/Adult CPR, pediatric first aid and American Red Cross Community Water Safety**. Wading pools with a depth of less than 2 feet shall not require staff to have Community Water Safety training.

a. If children are taken to off-site water activities, there shall be documentation on file at the center that the Director has verified that the supervising adult meets the above requirements or the lifeguard on duty is currently certified.

b. The center shall ensure that appropriate water safety devices are used as applicable when children are participating in water activities.

**Or equivalent

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of

Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5323. Required Child/Staff Ratios

A. Child/staff ratios are established to ensure the safety of all children.

B. Two child care staff are required at all times for centers with a licensed capacity of 10 or fewer children (including the Director's and/or staff's own children).

C. Required child care staff for centers with a licensed capacity of 11 or more children:

Note: New child/staff ratios become effective within two years of the effective date of these regulations.

Child/Staff Ratios		
Ages of Children	Child/Staff Ratio	New Child/Staff Ratio (Effective date to be determined upon promulgation of final rule)
Infants under 12 months	6:1	5:1
1 year old	8:1	7:1
2 year old	12:1	11:1
3 year old	14:1	13:1
4 year old	16:1	15:1
5 year old	20:1	19:1
6 year old and up	25:1	23:1

1. An average of the child/staff ratio may be applied to mixed groups of children ages 2, 3, 4, and 5.

2. Ratios for children under 2 or over 5 years old are excluded from averaging.

3. When a mixed group includes children under 2 years of age, the age of the youngest child determines the ratio for the group to which the youngest child is assigned.

4. When a mixed group includes children 6 years old and older, the ages of the children under 6 determine the ratio for the group.

D. Only those staff members directly involved in child care and supervision shall be considered in assessing child/staff ratio.

E. Child/staff ratio as specified in §5323.A-C plus one additional adult shall be met for all off-site activities.

F. A designated number of children shall relate daily to a designated staff on a regular and consistent basis using the following guidelines. An average of the group sizes may be applied on mixed age groupings as allowed under §5323.C.

G. Maximum number of children per group (specified space) or unit:

Ages of Children	Child/Staff Ratio	New Child/Staff Ratios (Effective date to be determined upon promulgation of final rule)
Infants (to 12 months)	12:2	10:2
1 year old	16:2	14:2

2 year old	12:1	11:1
3 year old	14:1	13:1
4 year old	16:1	15:1

H. When the nature of a special need or the number of children with special needs warrants added care, the center shall add sufficient staff as deemed necessary by the Bureau to compensate for these needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5325. Care of the Children

A. Food Service and Nutrition

1. Well-balanced and nourishing meals and snacks shall be provided.

a. Children in care for more than four hours shall receive a quantity of food that will supply approximately one-half to two-thirds of the current Recommended Dietary Allowances of the National Research Council.

b. Additional servings of nutritious food over and above the required daily minimum shall be made available to children as needed if not contraindicated by special diets.

c. To ensure well-balanced and nourishing meals and snacks, the specified patterns for meals and snacks included under the Child Care Food Program of the United States Department of Agriculture (See Appendix A) shall be followed.

2. Meals and snacks shall be served at 2-2½ hour intervals.

3. Current weekly menus for meals and snacks shall be prominently posted.

a. The menu shall list the specific food items served.

b. Menu substitutions shall be recorded on or near the posted menu.

4. Children's food shall be served on individual plates, napkins, paper towels or in cups as appropriate.

5. Centers that do not serve breakfast shall have food available for children who arrive in the morning and who have not eaten breakfast.

6. Children shall not be allowed to bring food into the center. The following exceptions are allowed:

a. bottled formula for infants supplied by the parent shall have caps and shall be labeled with the child's name or initials and refrigerated upon arrival;

b. baby food supplied by the parent shall be in the original unopened container and labeled with the child's name;

c. when a child requires a special diet, a written statement from a medical authority shall be on file;

d. children with food allergies/intolerance shall have a written statement signed by the child's parent indicating the specific food allergy/intolerance;

e. when a child requires a modified diet for religious reasons, a written statement to that effect from the child's parent shall be on file;

f. refreshments for special occasions such as birthday parties and holidays, with prior approval from the Director.

7. Food shall not be sold to the children. Soft drink vending machines and other food dispensers for personnel use shall be located outside of the children's areas.

8. Infants and toddlers shall be supervised while eating.

a. Infants shall be held while being bottle fed. A bottle shall not be propped at any time.

b. An infant/toddler who can hold a bottle shall not be placed in a crib with the bottle unless written permission is obtained from the parent.

c. Current feeding instructions shall be provided to the center by the parent. These instructions, from the parent or physician, shall be kept on file and followed.

d. Baby bottles shall not be heated in a microwave.

e. Age appropriate equipment such as feeding tables, booster seats, highchairs, etc. shall be used at mealtimes for infants and toddlers.

9. Drinking water shall be available indoors and outdoors to all children. Drinking water shall be offered at least once between meals and snacks to all children. Water given to infants shall be in accordance with written instructions from parents.

10. Perishable food shall be refrigerated at 45°F or below.

B. Health Service to the Child

1. A center that gives medication assumes additional responsibility and liability for the safety of the children.

2. No medication of any type, prescription or over the counter, shall be given by center staff unless authorized in writing by the parent.

a. Medication and/or special medical procedures shall be given to a child by designated staff only when there is a written, signed request from the parent including child's name, date, dosage, time, name of the medication, instructions and possible side effects.

i. Medical procedures to be provided on an as needed basis shall be updated as changes occur, or at least annually.

ii. If parent provides over-the-counter medication to be given on an as needed basis, the written authorization shall be updated by the parent as changes occur or at least annually and include the child's name, date of authorization, name of medication and dosage. In addition to this authorization, center staff shall document phone contact with the parent prior to giving the medication.

b. All over-the-counter and prescription medication sent to the center shall be in its original container and clearly labeled with the child's name and complete directions for giving the drug.

c. The center shall follow any special directions as indicated on the medication bottle, i.e., before or after meals, with food or milk, refrigerate, etc.

d. Documentation shall be maintained verifying that medication was given according to parent's authorization,

including the date, time and signature of the staff member who gave the medication.

3. Upon arrival at the center, each child shall be observed for possible signs of illness, infections, bruises and injuries, etc. When noted, results shall be documented.

4. If symptoms of contagious or infectious disease develop while the child is in care, he/she shall be placed in isolation until a parent or designated person has been consulted. Any child who has had a 100°F oral temperature reading or 101°F rectal temperature reading the last 12 hours is suspect.

5. Children with the following illnesses or symptoms shall be excluded from the center based on potential contagiousness (communicability) of the disease. Periods may be extended beyond this depending upon individual conditions.

Illness/Symptom	Exclude Until
Meningococcal disease (Neisseria meningitis)	Well with proof of noncarriage*
Hib disease (hemophilus influenza)	Well with proof of noncarriage
Diarrhea (two or more loose stools or over and above what is normal for that child).	Diarrhea resolved or is controlled (Contained in diaper or toilet).
Fever of unknown origin (100 °F oral or 101 °F rectal or higher) some behavioral signs of illness.	Fever resolved or cleared by child's physician or health department.
Chicken pox	Skin lesions (blisters) scabbed over completely.
Hepatitis A	One week after illness started and fever gone.
AIDS (or HIV infection)	Until child's health, neurologic development, behavior, and immune status is deemed appropriate (on a case-by-case basis) by qualified persons**, including the child's physician, chosen by the child's parent or guardian and the Director.
Undiagnosed generalized rash	Well or cleared by child's physician.
Any child with a sudden onset of vomiting, irritability, or excessive sleepiness.	Evaluated and cleared by child's physician.

* Proof of Noncarriage. Either by completion of appropriate drug regimen of Rifampin or by a negative throat culture obtained after completion of treatment for meningitis.

** These persons should include the child's physician and other qualified individuals such as the Director, a representative of the state's Office of Public Health, and a child development specialist and should be able to evaluate whether the child will receive optimal care in the specific program being considered and whether HIV-infected child poses a potential threat to others.

6. With most other illnesses, children have either already exposed others before becoming obviously ill (e.g., colds) or are not contagious one day after beginning treatment (e.g., strep throat, conjunctivitis, impetigo, ringworm, parasites, head lice, and scabies.) The waiting periods required after the onset of treatment vary with the disease.

Check with your local health department for information on specific diseases. Children who are chronic carriers of viral illnesses such as CMV (cytomegalovirus) and Herpes can and should be admitted to day care centers.

Note: A center shall institute a policy of using universal precautions when activities involve contact with blood or other body fluids (such as diaper changing, cleaning up blood spills, etc.). For additional information refer to the universal precautions as required by Chapter XXI of the State Sanitary Code.

7. The Director shall report any cases or suspected cases of notifiable communicable diseases to the local Office of Public Health.

8. The parent or designated person shall be notified immediately if a child becomes ill, has an accident or exhibits unusual behavior while in care. Notification shall be documented.

C. Supervision

1. Children shall be under direct supervision at all times. Children shall never be left alone in any room or outdoors at any time without a staff present.

2. While on duty with a group of children, child care staff shall devote their entire time in supervision of the children and in participation with them in their activities.

3. At naptime, children may be grouped together with one staff supervising the children sleeping while other staff rotate various duties and lunch time. All children sleeping shall be in the sight of the naptime worker. Appropriate staffing shall be present within the center to satisfy child/staff ratios.

4. Individuals who do not serve a purpose related to the care of children and/or hinder supervision of the children shall not be present in the center.

D. Fire Safety. Fire drills shall be conducted at least monthly. These shall be conducted at various times of the day and night (if nighttime care is provided) and shall be documented. Documentation shall include:

1. date and time of drill;
2. number of children present;
3. number of staff present;
4. amount of time to evacuate the center;
5. problems noted during drill and corrections noted;
6. signatures or initials of staff present.

E. Emergency Procedures

1. The Director shall ensure that the center has procedures for emergencies and evacuation as appropriate for the area in which the center is located and that staff is trained in these procedures.

Note: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

2. The Director shall notify the Bureau and document within 24 hours or the next work day the following reportable incidents:

- a. any death of a child while in the care of the center;
- b. any serious illness or injury requiring hospitalization or professional medical attention other than first aid of a child while in the care of the center;
- c. any fire;
- d. any structural disaster;
- e. any emergency situation that requires temporarily relocating children;

f. any unusual situation which would affect the care of the children, i.e., extended loss of power, water service, gas, etc.

F. Care for Children During Nighttime Hours

1. All minimum standards for child care centers apply to centers which provide care after 9 p.m. with the inclusion of the following standards as set forth in §5325.F.1-2. Any center caring for children at night, but for less than 24 hours shall follow the same requirements for personnel standards as previously stated.

2. In addition, the following standards shall apply.

a. There shall be a designated "Staff-in-Charge" employee as required in §5317.B who is at least 21 years of age.

b. There shall be at least two adults on the premises at all times, regardless of the number of children in attendance.

c. Adequate staff shall be present in the center to meet the child/staff ratios as indicated in §5323.C, however, there shall always be a minimum of at least two staff present.

d. Children may be grouped together with one staff supervising the children sleeping while other staff rotate various duties. All children sleeping shall be in sight of the supervising staff.

e. Meals shall be served to children who are in the center at the ordinary meal times.

f. Each child shall have a separate, age appropriate bed or cot with a mat or mattress with appropriate linens for the bed and child. (Bunk beds are not allowed.)

g. There shall be a posted schedule of activities.

h. Evening quiet time activity such as story time, games, and reading shall be provided to each child arriving before bedtime.

i. Physical restraints shall not be used to confine children to bed.

j. Center's entrance and drop off zones shall be well-lighted during hours of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), repealed and repromulgated LR 24:

§5327. General Records

A. Personnel

1. There shall be a record for each employee, including substitutes, on file at the center. This record shall include:

a. application and/or a staff information form to include name, date of birth, social security number, address and telephone number, previous training, education, emergency contact information and work experience;

b. employee's starting and termination date;

c. health records, to include a tuberculin test result and documentation of good health, signed by a physician or designee;

d. job description, including duties to be performed, hours of work, and supervisor;

e. documentation of three positive reference checks;

f. documentation of appropriate driver's license as required in §5313.C.3 if driving is part of employment;

g. documentation of satisfactory criminal record check, as required by R.S. 15:587.1.

2. There shall be a record for each volunteer on file to include information required as follows:

a. essential and nonessential volunteers shall meet §5327.A.1.a.-g and §5321.B and C.2;

b. luxury volunteers' file shall include his/her name, address, date of visit, and reason/interest in the center.

3. There shall be a record for each student trainee on file at the center to include information required in §5327.A.1.a.-f, and g* if student trainee has supervisory or disciplinary control over children.

*Note: The individual(s) shall never be left alone or have supervisory or disciplinary control over children unless §5327.A.1.g is met.

B. Children's Records. There shall be a record for each child on file at the center. This record shall include:

1. general information master card including medical history;

2. immunization record;

3. authorization for release of children;

4. authorization for emergency medical treatment;

5. authorization for off-site activities, if applicable;

6. authorization for medication administration, if applicable;

7. authorization for water activities, if applicable;

8. authorization for transportation, if applicable;

9. infant/toddler bottle authorization, if applicable;

10. special diet/current feeding schedule, if applicable.

C. Retention of Records

1. For licensing purposes, personnel records shall be kept on file a minimum of one year from termination of employment from the center.

2. For licensing purposes, children's records shall be kept on file a minimum of one year from date of discharge from the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§5329. Physical Environment

A. Space Required

1. The center shall be used exclusively by the children and center staff during operating hours. Area licensed for use as a day care center shall not be dually licensed.

2. Indoor Space

a. There shall be a minimum of indoor space of at least 35 square feet per child. The space shall not include toilet facilities, hallways, lofts, storage or food preparation areas, or offices. Any room counted as play space shall be available for play during play hours. If rooms are used exclusively for dining or sleeping, they cannot be included in the licensed capacity.

b. The number of children using a room shall be based on the 35 square feet per child requirement except for group activities such as film viewing, parties, dining and sleeping.

c. There shall be provisions for temporarily isolating a child having or suspected of having a communicable disease

so he/she can be removed from the other children. Movable partitions are permissible so that the space may be used for play when not needed for isolating an ill child.

d. An area shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

3. Outdoor Play Space

a. There shall be outdoor play space with direct exit from the center into the outdoor play yard.

b. The outdoor space shall provide a minimum of 75 square feet for each child in the outdoor play space at any one time. The minimum outdoor play space shall be available for at least one-half of the licensed capacity.

c. The outdoor play space shall be enclosed with a fence or other barrier in such a manner as to protect the children from traffic hazards, to prevent the children from leaving the premises without proper supervision, and to prevent contact with animals or unauthorized persons.

d. Crawlspace and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

e. Areas where there are open cisterns, wells, ditches, fish ponds and swimming pools or other bodies of water shall be made inaccessible to children by fencing.

B. Furnishings and Equipment

1. There shall be a working and readily available telephone at the center. Coin operated telephones are not allowed for this purpose.

a. When a center has multiple buildings and a telephone is not located in each building where the children are housed, there shall be a written plan posted in each building for securing emergency help.

b. Appropriate emergency numbers such as fire department, police department, and medical facility shall be prominently posted on or near the telephone.

c. The telephone number for poison control shall be prominently posted on or near the telephone.

d. The center's location address shall be posted with the emergency numbers.

2. All equipment shall be appropriate to the needs and ages of the children enrolled.

3. All play equipment and equipment necessary for the operation of the center shall be maintained in good repair.

4. Play equipment of sufficient quantity and variety for indoor and outdoor use shall be provided which is appropriate to the needs and ages of the children as follows:

a. equipment that encourages active physical play (trampolines are prohibited);

b. equipment that encourages quiet play or activity.

5. There shall be low, open shelves, bins, or other open containers within easy reach of the children for the storage of play materials in each play area. Toy chests with attached lids are prohibited.

6. There shall be individual, labeled space for each child's personal belongings.

7. Chairs and table space of a suitable size shall be available for each child 2 years of age or older.

8. Individual and appropriate sleeping arrangements shall be provided for each child. (State and local health requirements regarding sleeping arrangements shall be met.)

Each child shall be provided with a cot, mat, or crib (baby bed) of appropriate size, height, and material, sufficient to insure his/her health and safety. Each infant shall have a crib separated from all other cribs (nonstackable). Playpens shall not be substituted for cribs. Mats may be used only if the area used for napping is carpeted or if the center is centrally heated and cooled. If mats are used, they shall be of adequate size and material to provide for the health and safety of the child. Each child's sleeping accommodations shall be assigned to him/her on a permanent basis and labeled.

9. Sheets shall be provided by either the center or the parent, unless the cots or mats are covered with vinyl or another washable surface. A labeled sheet or blanket shall also be provided for covering the child.

10. Cribs, cots, or mats shall be spaced at least 18 inches apart when in use with a head/toe arrangement so that no two children's heads are adjacent.

C. Safety Requirements

1. Prescription and over-the-counter medications, poisons, cleaning supplies, harmful chemicals, equipment, tools and any substance with a warning label stating it is harmful or that it should be kept out of the reach of children shall be locked away from and inaccessible to children. Whether a cabinet or entire room, the storage area shall be locked. Refrigerated medication shall be in a secure container to prevent access by children and avoid contamination of food.

2. Secure railing shall be provided for flights of more than three steps and for porches more than 3 feet from the ground.

3. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

4. Accordion gates are prohibited unless there is documentation on file that the gate meets requirements as approved by the Office of Public Health, Sanitarian Services.

5. First aid supplies shall be available at the center.

6. All areas of the center used by the children, including sleep areas, shall be properly heated, cooled, ventilated, and lighted to prevent extreme conditions in the center.

7. The center and yard shall be:

a. clean;

b. free from hazards.

8. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the center. Documentation shall include date, time, and signature of staff conducting the visual check and shall be reviewed and signed/initialed by the Director.

9. The center shall prohibit the use of alcohol and the use or possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in the center, on the playground and on any center-sponsored field trip.

10. The center shall prohibit the use of tobacco in any form in indoor areas of the center, on the playground, and on any center-sponsored field trip.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

(Editor's Note: In a final rule published on pages 1130-1134 of the October 1994 *Louisiana Register*, the Chapter number and heading should have been listed as: **Chapter 54. Sick Child Day Care Centers.**)

Interested persons may request copies as well as submit written comments on this proposed rule to Steve Phillips, Office of the Secretary, Bureau of Licensing, Box 3078, Baton Rouge, Louisiana 70821-3078. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing within 20 days after publication. The deadline date for receipt of all comments is 4:30 p.m.

Public hearings on this proposed rule will be held on Friday, April 24, 1998 at Delgado Community College, Little Theater, New Orleans, LA from 10 a.m.-12 p.m.; Monday, April 27, 1998 at Department of Transportation and Development, First Floor Auditorium, Baton Rouge, LA from 10 a.m.-12 p.m.; Tuesday, April 28, 1998 at Louisiana Tech University, Wylly Tower Auditorium, Ruston, LA from 10 a.m.-12 p.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at the public hearing.

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Class "A" Child Day Care**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated implementation costs to State government associated with this rule will be the cost of printing of the changes to the licensing standards, announcing the change and the cost of printing approximately 1,400 copies of the Child Day Care Centers Class "A" Licensing manuals to incorporate the changes into existing policy. The projected estimated cost of printing is \$4,429 including postage to mail copies to licensed Class "A" Day Care Centers.
- 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 is no anticipated cost to providers until fiscal year 2000/2001 when centers may have to hire additional staff to meet lower child/staff ratios that are anticipated to be effective September 2000. There is no way to anticipate estimated cost but with the upgrading of standards providers may be eligible to receive assistance or grants intended for the improvement and upgrading of child care services. Also, we currently have centers already meeting the proposed, or lower, child/staff ratios.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The rule will have no impact on competition and no anticipated impact on employment until 2000 when centers may

have to hire additional staff to meet lower child/staff ratios anticipated to be effective 9/1/2000. There is no way to anticipate the estimated cost.

William M. Hightower
Deputy Secretary
9803#064

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Transportation and Development
Office of the General Counsel**

Cash Management Plan
(LAC 70:I.Chapter 11)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development intends to promulgate a rule entitled "Department of Transportation and Development Cash Management Plan," in accordance with R.S. 48:251(D).

Title 70

TRANSPORTATION

Part I. Office of the General Counsel

Chapter 11. Cash Management Plan

§1101. Phased Funding

The department will initiate phased funding of multi-year construction projects by only appropriating sufficient funds in any fiscal year to pay for anticipated actual construction contract obligations incurred in that fiscal year. A multi-year phased funding plan will be developed for each long-term construction contract approved by the secretary for phased funding. The phased funding plan will provide annual anticipated expenditure projections over the life of the project based on contractor supplied information and data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:251(D).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 24:

§1103. Project Eligibility for Phased Funding

In order to qualify for phased funding, the proposed project must be a multi-year construction and/or renovation project which is either:

1. federally aided and exceeding \$10,000,000 in estimated total cost; or
2. a purely state-funded or TIMED project exceeding \$5,000,000 in estimated total cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:251(D).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 24:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this notice of intent to Sherryl J. Tucker, Senior Attorney, Legal Section, Department

NOTICE OF INTENT

Frank M. Denton
Secretary

**Department of the Treasury
Board of Trustees of the State Employees Group
Benefits Program**

Mental Health Parity

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

RULE TITLE: DOTD Cash Management Plan

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

Act 555 of 1997 requires the Department of Transportation and Development to establish a cash management plan for funds made available for the timely construction of projects. The department anticipates that the cost to implement this plan will be approximately \$150,000 in fiscal year 1998-99. This cost includes \$50,000 for a new full time Accountant Manager 2 to operate the cash management system.

Approximately \$100,000 in one-time expenditures are anticipated for the design and installation of an automated phased funding data base. Currently funds are only appropriated to specific projects when the legislature has appropriated 100 percent of the estimated funds to complete the project. Under the new procedures, DOTD will annually appropriated funds to certain selected multi-year construction projects based on a projection of the actual funds needed annually to satisfy contractor activity. As such, the actual expenditures for each contract will have to be closely monitored to determine the adequacy of annual appropriated amounts and the estimated future appropriations necessary to ultimately complete the multi-year construction contracts. In addition, new complex funding program activities must be implemented for those multi-year construction projects having funding support from the Federal government. All of these additional procedures and data base management responsibilities will require additional staff support. These funds will be provided from the Transportation Trust Fund.

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

The proposed rule will have no effect 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)

The proposed rule will benefit directly affected persons and nongovernmental groups insofar as more DOTD road construction projects will be initiated in a shorter span of time. This will eventually result in certain projects being completed earlier than currently estimated. The amount of this positive economic impact is currently undeterminable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not directly affect competition and/or employment.

Frank M. Denton
Secretary
9803#024

Richard W. England
Assistant to the
Legislative Fiscal Officer

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board hereby gives notice of intent to amend the Plan Document of Benefits. The board finds that it is necessary to amend provisions of the Plan Document regarding benefits for treatment of mental health and substance abuse disorders in compliance with state and federal law, in particular, the Mental Health Parity Act of 1996. Accordingly, the board intends to amend the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars:

Amendment Number 1

Amend the Schedule of Benefits, under the heading "Mental Health/Substance Abuse," as follows:

a. Under the subheading "Benefits," amend Paragraph 2 and add Paragraphs 3 and 4, to read as follows (Paragraph 1 is unchanged):

1. ...
2. 100 percent of eligible expenses over \$5,000 until the lifetime maximum for all program benefits is reached.
3. Up to a maximum of 45 inpatient days per person, per calendar year.
4. Up to a maximum of 52 outpatient visits per person, per calendar year inclusive to the intensive outpatient program.

Note: Two days of partial hospitalization or two days of residential treatment center hospitalization may be traded for each inpatient day of treatment that is available under the 45-day calendar year maximum for inpatient treatment. A residential treatment center is a 24-hour, mental health or substance abuse, nonacute care treatment setting for active treatment interventions directed at the amelioration of the specific impairments that led to the admission. Partial hospitalization is a level of care where the patient remains in the hospital for a period of less than 24 hours.

b. Under the subheading "Maximum," delete Paragraphs 2 and 3.

Amendment Number 2

Amend the second, unnumbered, paragraph of Article 3, Section I, Subsection D, to read as follows:

D. Maximum Benefit

* * *

Benefits for mental health and substance abuse treatment will be paid subject to the lifetime limits for all benefits in the

Schedule of Benefits. Benefits paid may be used toward the restoration of the lifetime balance as set forth in the Schedule of Benefits.

* * *

Amendment Number 3

Amend Article 3, Section I, Subsection F, Paragraph 33, to read as follows:

F. Eligible Expenses

* * *

33. Mental health and/or substance abuse services only when obtained through the Program's contractor. These services are subject to a separate \$200 deductible and have a separate \$1,000 out-of-pocket maximum per individual. There is also a \$50 per day deductible for a maximum of five days (\$250) for inpatient benefits. After satisfying any applicable deductibles, the Program, through the contractor pays 80 percent of the first \$5,000 of eligible expenses per calendar year and then 100 percent of eligible expenses up to the lifetime maximum for all benefits listed in the Schedule of Benefits.

* * *

Interested persons may present their views, in writing, to James R. Plaisance, Executive Director, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, April 24, 1998.

James R. Plaisance
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Mental Health Parity**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This change in mental health benefits that will be provided to the program will be cost neutral as amended. Currently, the mental health and substance abuse benefits are capitated at a fixed monthly cost to the program. Louisiana Biodyne is the provider of these services and does not anticipate these changes to affect this rate.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This benefit modification is being made to bring the State Employees Group Benefits Program (SEGBP) into compliance with federal parity legislation.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Those persons who will be affected are those plan members of the program who seek treatment for mental health and substance abuse diagnoses. These changes are made to bring the SEGBP plan into compliance with federal legislation and are designed to be cost neutral to the plan member and the state of Louisiana.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Competition and employment will not be affected.

James R. Plaisance
Executive Director
9803#008

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the Teachers' Retirement System**

Cost of Living Adjustment
(COLA) (LAC 58:III.1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Trustees of the Teachers' Retirement System approved the following method for the distribution of a cost-of-living adjustment for all eligible retirees, all eligible beneficiaries of deceased retirees and all eligible survivors of deceased members of the Teachers' Retirement System from the Employee Experience Account. This benefit adjustment is scheduled to become effective July 1, 1998.

**Title 58
RETIREMENT**

**Part III. Teachers' Retirement System of Louisiana
Chapter 3. Cost-of-Living
§1303. Cost-of-Living Adjustment—July 1, 1998**

A. Effective July 1, 1998, the Board of Trustees of the Teachers' Retirement System of Louisiana shall increase the retirement benefit or other benefit of each retiree, or the beneficiary or survivor of any member eligible to receive benefits, on account of the death of the member or retiree. This increase in benefit shall be provided from the Employee Experience Account held at the Teachers' Retirement System of Louisiana.

B. The increase in benefit granted from the Employee Experience Account shall be a monthly increase in the benefit of each eligible recipient as determined in accordance with the formula: $\$10.00 + W + 2X + Y + 2Z$, where:

- W = \$1.00 per year since retirement or death of the member or retiree to June 30, 1997;
- X = \$1.00 per year since retirement or death of the member or retiree in excess of 10 years as of June 30, 1997;
- Y = \$1.00 per year of credited service at the time of retirement or death of the member or retiree;
- Z = \$1.00 per year of credited service greater than 25.0 years at the time of retirement or death of the member or retiree.

C. No increase in benefit shall be paid to any retiree, beneficiary or survivor unless such person was receiving benefits on or prior to June 30, 1997. In addition, no increase in benefits shall be paid to any former participant of the Deferred Retirement Option Plan unless both plan participation and employment were terminated by the plan participant on or prior to June 30, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:787 (D) and 11:883.1.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System, LR 24:

Interested persons may comment on the proposed rule in writing until 4:30 p.m., April 30, 1998, to Graig A. Luscombe,

Assistant Director, Teachers' Retirement System of Louisiana,
 Box 94123, Baton Rouge, Louisiana 70804-9123.

James P. Hadley, Jr.
 Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
 FOR ADMINISTRATIVE RULES
 RULE TITLE: Cost-of-Living Adjustment (COLA)**

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

Act 1031 of 1992 (LA. R.S. 11:883.1) established the Employee Experience Account from which Teachers' Retirement System of Louisiana (TRSL) may provide periodic cost-of-living adjustments to all eligible retirees and to beneficiaries and survivors of retirees or members. As of June 30, 1997, the Employees Experience Account had on deposit \$435,807,655. Effective July 1, 1998, the TRSL Board of Trustees will provide the second cost-of-living adjustment from the Employee Experience Account. No increase in benefits will be paid to any retiree, beneficiary, or survivor unless such person was receiving benefits from TRSL on or prior to June 30, 1997. The monthly adjustment to be granted eligible recipients will be based upon the formula $\$10.00 + W + 2X + Y + 2Z$, where:

- W = \$1.00 per year since retirement or death of the member or retiree to June 30, 1997;
- X = \$1.00 per year since retirement or death of the member or retiree in excess of 10 years as of June 30, 1997;
- Y = \$1.00 per year of credited service at the time of retirement or death of the member or retiree;
- Z = \$1.00 per year of credited service greater than 25.0 years at the time of retirement or death of the member or retiree.

It is estimated by TRSL that this benefit adjustment will cost approximately \$28.0 million the first year of implementation and will be provided to approximately 40,700 retirees, beneficiaries and survivors of deceased members. The actuarial cost for providing this benefit adjustment for all eligible recipients and their beneficiaries for the remainder of their lives is estimated to be \$212,395,677. Administrative costs associated with the provision of this benefit increase are minimal and will create 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 will be no direct effect on revenue collections of state or local governmental units as a result of this policy. Retirement benefits provided by a state public pension plan are exempt from Louisiana personal income tax; however, additional income being provided in the form of retirement benefits may be recycled into the Louisiana economy.

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

It is estimated by TRSL that eligible recipients, on the average, will receive a 5.0 percent increase in benefits. The actual increase for each eligible recipient will be dependent upon the individual recipient's circumstances.

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

There will be no effect on competition and employment as a result of this policy.

James P. Hadley, Jr.
 Director
 9803#013

Richard W. England
 Assistant to the
 Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Wildlife and Fisheries
 Wildlife and Fisheries Commission**

Resident Game Hunting Season—1998-99
 (LAC 76:XIX.101 and 103)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend rules and regulations governing the hunting of resident game birds and game quadrupeds.

**Title 76
 WILDLIFE AND FISHERIES
 Part XIX. Hunting**

**Chapter 1. Resident Game Hunting Season
 §101. General**

The Resident Game Hunting Season, 1998-99 regulations are hereby adopted by the Wildlife and Fisheries Commission. A complete copy of the Regulation Pamphlet may be obtained from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:

§103. Resident Game Birds and Animals 1998-99

A. Shooting hours. One-half hour before sunrise to one-half hour after sunset.

B. Consult Regulation Pamphlet for seasons or specific regulations on Wildlife Management Areas or specific localities.

Species	Season Dates	Daily Bag Limit	Possession Limit
Quail	Nov. 14-Feb. 28	10	20
Rabbit	Oct. 3-Feb. 28	8	16
Squirrel	Oct. 3-Feb. 7	8	16
Pheasant	Nov. 14-Jan. 31	2 (Cock Only)	4
Deer	See Schedule	1 Antlered and 1 Antlerless (When Legal)	6

C. Deer Hunting Season Recommendations

Area	Archery	Muzzleloader (All Either Sex)	Still Hunt	With or Without Dogs
1	Oct. 1- Jan. 31	Nov. 14-Nov. 20 Jan. 25-Jan.31	Nov.21-Dec. 4 Jan. 9-Jan.24	Dec. 5- Dec.13 Dec. 19- Jan.8
2	Oct. 1- Jan. 31	Oct. 17-Oct. 23 Jan. 4-Jan. 10	Oct. 24-Dec.4	Dec. 5- Jan. 3
3	Sept.19- Jan.19	Oct. 5-Oct. 9 Dec. 12-Dec. 18	Oct. 10-Dec.6 Dec. 19-Jan.3	
4	Oct. 1- Jan. 31	Nov. 14-Nov. 20 Jan. 4-Jan. 10	Nov. 21-Jan.3	
5	Oct. 1- Jan. 31	Nov. 14-Nov. 20 Jan. 4-Jan. 10 (Bucks Only)	Nov.21-Nov.29	
6	Oct. 1- Jan. 31	Nov. 14-Nov. 20 Jan. 25-Jan. 31	Nov. 21-Dec.4	Dec. 5- Dec.13 Dec.19- Jan.24
7	Oct. 1- Jan. 31	Oct. 3-Oct. 9 Jan. 18-Jan. 24	Oct.10-Oct.25 Nov. 21-Dec.6	Dec.12- Jan.17

D. Modern Firearm Schedule (Either Sex Seasons)

Area	Basic Season Dates	Total Days	Exceptions (Those portions of the following parishes)
1	Nov.21-22, 27-29 Dec.5-6, 12-13	9	Nov.21-22, 27-29 (Franklin, Catahoula, LaSalle, Caldwell) Nov.21-22, 27-29, Dec.5-6 (Avoyelles, Grant, Rapides)
2	Oct.24-25, Oct.31-Nov. 1, Nov. 7-8, 27-29, Dec. 5-6	11	Oct.24-25, Nov.27-29 (Caldwell, LaSalle) Oct.24-25, Nov.27-29, Dec.5-6 (Avoyelles)
3	Oct.10-11, 24-25, Oct.31-Nov.1, Nov.7-8, 27-29	11	Oct.10-11, Nov.27-29, Dec.5-6 (St. Landry)
4	Nov.21-22, 27-29	5	Nov.21-22, 27-29, Dec.5-6, 12-13 (East Carroll--That portion lying between the Mississippi River Levee and the Mississippi River)
5	None		
6	Nov.21-22, 27-29, Dec.5-6, 12-13	9	Nov.21-22, 27-29, Dec.5-6 (Avoyelles, Rapides, St. Landry)
7	Oct.10-11, Nov.21-22, 27-29, Dec.12-13	9	

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:

Public hearings will be held at regularly scheduled Louisiana Wildlife and Fisheries Commission meetings from April through July. Additionally, interested persons may submit written comments relative to the proposed rule until May 22, 1998 to Hugh A. Bateman, Administrator, Wildlife Division, Box 98000, Baton Rouge, LA 70898.

Thomas M. Gattle, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Resident Game Hunting Season—1998-99**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Establishment of hunting regulations is an annual process. The cost of implementing the proposed rules, aside from staff time, is the production of the regulation pamphlet. Cost of printing the 1997-98 state hunting pamphlet was \$13,650 and no major increase in expenditures is anticipated. Local governmental units will not be impacted.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Projected hunting license fee collections are between \$4 million and \$5 million annually. Additionally, hunting and related activities generate approximately \$25 million in state sales tax and \$5.6 million in state income tax (Southwick and Associates, 1997). Failure to adopt rule changes would result in no hunting season being established and a potential loss of some of these revenues.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Hunting in Louisiana generates in excess of \$596,000,000 annually through the sale of outdoor-related equipment, associated items and other economic benefits. Figures are based on the national surveys by Southwick and Associates for the IAFWA.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Hunting in Louisiana provides 15,271 jobs (Southwick and Associates, 1997). Not establishing hunting seasons might have a negative and direct impact on these jobs.

Ronald G. Couvillion
Undersecretary
9803#035

Richard W. England
Assistant to the
Legislative Fiscal Officer