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This public document was published at a total cost of \$2,500. Two hundred fifty copies of this public document were published in this monthly printing at a cost of \$2,500. The total cost of all printings of this document including reprints is \$2,500. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 49:981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Executive Orders

EXECUTIVE ORDER BJ 13-16

Flags at Half Staff

WHEREAS, On Monday morning, September 16, 2013, twelve people were killed in a senseless attack at the Washington Navy Yard;

WHEREAS, Eight individuals were also wounded in this attack;

WHEREAS, Countless service members, law enforcement officers, first responders, volunteers and citizens risked their lives to provide immediate aid to the numerous victims;

WHEREAS, The thoughts and prayers of all Louisianians are with the families and the victims of this horrific attack.

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect for the victims of the Washington Navy Yard attack, effective immediately, the flags of the State of Louisiana shall be flown at half staff over the State Capitol and all public buildings and institutions of the State of Louisiana until sunset on Friday, September 20, 2013.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, September 20, 2013, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 17th day of September, 2013.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1310#091

EXECUTIVE ORDER BJ 13-17

Offender Labor

WHEREAS, during the 1988 Regular Session of the Louisiana Legislature, Act. No. 933 was enacted relative to correctional facilities offender labor;

WHEREAS, as amended, Act. No. 933, among other things, authorizes the governor to use offender labor in certain projects or maintenance or repair work; and

WHEREAS, the Act further provides that the governor, upon determining that it is appropriate and in furtherance of rehabilitation and training of offenders, may, by executive order, authorize the use of offenders of a penal or correctional facility owned by the State of Louisiana for necessary labor in connection with a particular project;

NOW THEREFORE I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: In furtherance of the goals of the State of Louisiana of supporting positive offender welfare, rehabilitating offenders, reducing recidivism, and reintegrating offenders into society, offender labor is hereby authorized to complete construction of a certain warehouse facility at Louisiana State Penitentiary, Angola, Louisiana, to be utilized by Prison Enterprises in administration of the Offender Canteen Packaging Program.

SECTION 2: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 7th day of October, 2013.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1310#092

Emergency Rules

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs

Risk Assessment Evaluation (LAC 67:I.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(B), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:I, Subpart 1, General Administration, Chapter 3, Risk Assessment Evaluation. This Emergency Rule shall be effective on September 25, 2013, and shall remain in effect for a period of 120 days.

Chapter 3 is being amended in accordance with Act 814 of the 2012 Regular Legislative Session and R.S. 15:1110.2. The amendments include adding an owner, operator, current or prospective employee, or volunteer of juvenile detention facilities licensed by the department as individuals entitled to request risk assessment evaluation. In addition, the Chapter is being amended to add procedures and conditions of employment for current department employees and update risk evaluation panel membership consistent with current job titles and responsibilities.

The department began licensing juvenile detention facilities July 1, 2013. Under the statutory mandate of R.S. 15:1110.2, an owner, operator, current or prospective employee, or volunteer of a juvenile detention facility who has a justified finding of abuse and neglect is entitled to a risk assessment evaluation to determine if that individual poses a risk to children. Risk assessment evaluation procedures will exclude from employment in juvenile detention facilities those persons with a justified finding of abuse and neglect who have been determined to pose a risk to children. Those procedures will also provide to such persons who have been determined to pose a risk to children, due process rights to challenge a risk assessment evaluation finding which affects their employment rights. The department has published its Notice of Intent for permanent rules establishing the risk assessment evaluation procedures.

The department considers emergency action necessary to prevent a threat to the health, safety and welfare of children in juvenile detention facilities by excluding from employment those individuals at juvenile detention facilities who have a justified finding of abuse and neglect and have been determined to pose a risk to children. Thus, an emergency rule is needed to put such risk assessment evaluation procedures in place pending final approval of the permanent rules.

Title 67

SOCIAL SERVICES

Part I. Office of the Secretary

Subpart I. General Administration

Chapter 3. Risk Assessment Evaluation

§301. Introduction

A. The Department of Children and Family Services (DCFS) maintains a central registry of all justified (valid) reported cases of child abuse and neglect.

B. - B.2. ...

C. Any current employee/volunteer whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and who discloses that their name was recorded subsequent to January 1, 2010 on the state central registry with a justified (valid) finding of abuse or neglect, or through reasonable suspicion, or as the result of information known or received by DCFS will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be terminated immediately. As a condition of continued employment the employee/volunteer shall be directly supervised by another paid employee of the department, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the employee with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the employee/volunteer shall be terminated immediately. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding within the required timeframe, the employee/volunteer shall continue to have direct supervision at all times by another paid employee of the department who has not disclosed that they have a justified finding on the state central registry until a ruling by the DCFS Appeals Unit that they do not pose a risk to children. Supervision may end effective with such a ruling from the Appeals Unit. If the Appeals Unit upholds the Risk Evaluation Panel finding that they do pose a risk to children, they shall be terminated immediately.

D. In accordance with R.S. 46:1414.1(D) and 15:1110.2, any owner, operator, current or prospective employee, or volunteer of a child care facility or juvenile detention facility licensed by the department who discloses that he is currently recorded on the state central registry for a justified (valid) finding of abuse or neglect shall be entitled to a risk

evaluation provided by the department to determine whether the individual poses a risk to children.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Children's Code, Article 616, and Act 47, Act 221, and Act 388 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:

§303. Risk Evaluation Panel

A. A risk evaluation panel (panel) is established to conduct risk assessment evaluations for an individual, as listed in LAC 67:I.301.B and C, whose name appears on the state central registry, to determine if that individual poses a risk to children.

B.1. Members of the panel shall include:

- a. child welfare manager 2 for field operations;
- b. child welfare manager 2 for in home services;
- c. child welfare manager 2 for out of home services;
- d. risk evaluation panel coordinator;
- e. for panel reviews relating to owners, operators, current or prospective employees, or volunteers of child care facilities and juvenile detention facilities, program manager 2 for licensing; and

f. any others designated by the DCFS deputy secretaries for the Division of Programs and Division of Field Operations as appropriate designees of those listed above or as deemed necessary to convene an appropriate panel.

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:

§305. Risk Assessment Evaluation Process

A. - C.3. ...

D. The prospective or current employee must submit the information within 10 days of the request for a risk evaluation by mailing to:

Louisiana Department of Children and Family Services
Attention: Risk Evaluation Panel
627 North Fourth St., Third Floor
Baton Rouge, LA 70802

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:

§307. Risk Determination Criteria

A. ...

B. The panel shall determine if an individual poses a risk to children based on the information available in the DCFS case record, and any supplemental information provided by the prospective or current employee.

1. The following information shall be used by the panel to make its determination including, but not limited to:

- a. the nature of the abuse or neglect with which the individual was identified, including whether the abuse or

neglect resulted in serious injury or death to a child or children;

b. the circumstances surrounding the commission of the abuse or neglect, including the age of the perpetrator and the children, that would demonstrate likelihood of repetition;

c. the period of time that has elapsed since the abuse or neglect occurred and whether prior incidents of child abuse or child neglect have been determined justified against the individual;

d. whether the abuse or neglect involved single or multiple child victims or whether there were more multiple allegations over a period of time to indicate a pattern of behavior;

e. the relationship of the incident of child abuse or neglect to the individual's current or conditional job responsibilities within the department or facility;

f. evidence of rehabilitation such as employment, education, or counseling since the justified incident of abuse or neglect; and

g. letters of recommendation one of which must be from a former employer whenever possible.

C. ...

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:

§309. Appeals Process

A. - B. ...

C. The individual may file a request for an administrative appeal within 30 days of the mailing of the notice of the determination with the DCFS Appeals Unit. If the request for an administrative appeal is made by a current or prospective owner, employee or volunteer of a child care facility or juvenile detention facility, within 30 days of the mailing of the notice of the determination, that request shall be sent by the Appeals Unit to the Division of Administrative Law.

D. All decisions rendered by the administrative law judge within the Appeals Unit or the Division of Administrative Law are final and such decisions shall exhaust the individual's administrative appeal rights.

E. Within 30 days after the mailing date listed on the notice of the final decision by the Appeals Unit or the Division of Administrative Law, or if a rehearing is requested, within 30 days after the date of the decision thereon, the individual may obtain judicial review by filing a petition for review of the decision in the Nineteenth Judicial District Court or the district court of the domicile of the individual.

AUTHORITY NOTE: Promulgated in accordance with Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:

Suzy Sonnier
Secretary

1310#019

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs Economic Stability Section

Use of TANF Benefits (LAC 67:III.1259 and 5351)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), the Department of Children and Family Services (DCFS) proposes to adopt LAC 67:III, Subpart 2, Family Independence Temporary Assistance Program (FITAP), Chapter 12, Subchapter B, Section 1259, and Subpart 13, Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, Section 5351. This declaration is necessary to extend the original Emergency Rule since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. This Emergency Rule extension is effective on October 25, 2013 and will remain in effect until the final Rule becomes effective.

Sections 1259, Use of FITAP Benefits, and 5351, Use of KCSP Benefits, adopt provisions necessary to prevent cash assistance provided under the FITAP and KCSP programs from being used in any electronic benefit transfer (EBT) transaction in a liquor store, gambling casino or gaming establishment, or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes, or at any retailer for the purchase of an alcoholic beverage, a tobacco product, or a lottery ticket. Penalties are defined for recipients who are determined to violate these provisions.

Adoption is pursuant to Act 13 of the 2012 Regular Session of the Louisiana Legislature which authorizes DCFS to promulgate Emergency Rules to facilitate the expenditure of Temporary Assistance for Needy Families (TANF) funds. This action is aimed at preventing TANF transactions at specified locations and for certain types of purchases determined to be inconsistent with the purpose of TANF, which is financial assistance to help pay for the family's ongoing basic needs, such as food, shelter, and clothing. This rule is necessary to comply with the Middle Class Tax Relief and Job Creation Act of 2012, Section 4004 (Pub. L. 112-96). Failure to adopt these provisions could result in noncompliance with federal regulations and the imposition of penalties.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1259. Use of FITAP Benefits

A. FITAP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment; or
3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes.

B. FITAP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage as defined in R.S. 14.93.10(3);
2. a tobacco product as defined in R.S. 14.91.6(B); or
3. a lottery ticket as defined in R.S. 47:9002(2).

C. For purposes of this Section, the following definitions and provisions apply.

1. The term:

Liquor Store—any retail establishment that sells exclusively or primarily intoxicating liquor. It does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms *gambling casino* and *gaming establishment* do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term:

Electronic Benefit Transfer Transaction—the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

D. The FITAP case of a FITAP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112-96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 39:

Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5351. Use of KCSP Benefits

A. KCSP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment; or
3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes.

B. KCSP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage, as defined in R.S. 14.93.10(3);
2. a tobacco product, as defined in R.S. 14.91.6(B); or
3. a lottery ticket, as defined in R.S. 47:9002(2).

C. For purposes of this Section, the following definitions and provisions apply.

1. The term:

Liquor Store—any retail establishment that sells exclusively or primarily intoxicating liquor. It does not

include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms *gambling casino* and *gaming establishment* do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term:

Electronic Benefit Transfer Transaction—the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

D. The KCSP case of a KCSP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112-96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 39:

Suzy Sonnier
Secretary

1310#086

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—TOPS Tuition
(LAC 28:IV.301 and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the scholarship/grant programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, and R.S. 56:797(D)(2)].

This rulemaking amends the definition of *tuition* to provide that during the 2013-2014 academic year, tuition shall be the tuition amount published by the postsecondary institution. It further provides that beginning with the 2014-2015 academic year, tuition shall be the tuition amount as of August 1, 2013, published by the postsecondary institution plus any increase in tuition authorized by the legislature. This rulemaking also provides a requirement that the institution list the TOPS award amount on a student's fee bill, whether paper or on-line, and that the TOPS award amount must be the same as the institution's tuition amount listed on the fee bill.

This Emergency Rule is necessary to implement changes to the scholarship/grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the

financial welfare of the eligible students and the financial condition of their families. LASFAC has determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective September 17, 2013, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG14150E)

Title 28

EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

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

* * *

Tuition—

a. through the fall semester or term and winter quarter of the 2010-2011 award year, the fee charged each student by a post-secondary institution to cover the student's share of the cost of instruction, including all other mandatory enrollment fees charged to all students except for the technology fee authorized by Act 1450 of the 1997 Regular Session of the Legislature:

- i. which were in effect as of January 1, 1998;
- ii. any changes in the cost of instruction authorized by the legislature and implemented by the institution after that date; and

iii. for programs with alternative scheduling formats that are approved in writing by the Board of Regents after that date. Any payment for enrollment in one of these programs shall count towards the student's maximum eligibility for his award:

(a) up to the equivalent of eight full-time semesters of postsecondary education in full-time semesters for the TOPS Opportunity, Performance and Honors Award; or

(b) up to the equivalent of two years of postsecondary education in full-time semesters and summer sessions for the TOPS Tech Award;

b. beginning with the spring semester, quarter or term of the 2010-2011 award year and through the spring semester, quarter, or term of the 2012-2013 award year:

i. the tuition and mandatory fees authorized in Subparagraph a above; or

ii. the tuition fee amount published by the postsecondary institution, whichever is greater;

c. beginning with the fall semester, quarter, or term of the 2013-2014 award year, the tuition amount as of August 1, 2013, published by the postsecondary institution for the 2013-2014 award year for paying students;

d. beginning with the fall semester, quarter, or term of the 2014-2015 award year, the tuition amount as of August 1, 2013, published by the postsecondary institution for the 2013-2014 award year for paying students, plus any increase authorized by the legislature which is not attributable to any fees. No fees or increases attributable to

fees of any kind shall be included in the TOPS award amount. Stipends for TOPS Performance and Honors awards shall not be included in the TOPS award amount.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1489 (August 2009), LR 35:1490 (August 2009), LR 36:311 (February 2010), LR 36:490 (March 2010), LR 36:2854 (December 2010), LR 37:1561 (June 2011), LR 37:1562 (June 2011), LR 38:1953 (August 2012), LR 38:3156 (December 2012), LR 39:308 (February 2013), LR 39:

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1903. Responsibilities of Post-Secondary Institutions

A. - B.3. ...

4. annually, all institutions are required to provide LASFAC a current fee schedule. The schedule must include an itemized description of the composition of the mandatory fees listed on the fee schedule, including the tuition amount, as those fees will appear on a student's fee bill;

5. - 10.c. ...

11.a. Beginning with the spring semester of 2014, for a public college or university to be permitted to bill for a TOPS award amount under the provisions of Section 1903.B.6 of these rules, the college or university must include on the student fee bill line items entitled:

i. "Tuition Only" that equals the TOPS award amount listed on the fee bill;

ii. "TOPS Award Amount" as defined in Section 301; and

iii. "TOPS Stipends" for TOPS Honors and Performance Award stipends. These amounts shall not be included in the "Tuition Only" or "TOPS Award Amount" line items.

b. There shall be no reference to a tuition amount on a student's fee bill other than as provided herein.

C. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333

(November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:1233 (July 2009), LR 35:1490 (August 2009), LR 35:1491 (August 2009), LR 36:2857 (December 2010), LR 39:

George Badge Eldredge
General Counsel

1310#009

DECLARATION OF EMERGENCY

Office of the Governor Boxing and Wrestling Commission

Safety Requirements (LAC 46:XI.305 and 707)

The Louisiana state Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and 49:967(D), and adopts the following rules. The Louisiana state Boxing and Wrestling Commission, by this Emergency Rule, will make changes to Chapter 3, Professional Boxing rule §305, Contestant, and introduce to Chapter 7, Mixed Technique Events rule, §707, Safety, to require fighters with breast implants to submit to the commission, annually, a completed "release to compete with breast implants." This Emergency Rule is necessary in order to further ensure the health and safety of boxing and mixed technique contestants, to inform fighters of the risks involved and to protect promoters and this commission from any liability which may arise from any injuries incurred in a boxing or mixed technique event. A copy of the release to compete with breast implants is available for review by interested parties at the commission website, louisianaboxing.org.

This Emergency Rule is effective September 11, 2013, and will remain in effect for a period of 120 days, unless renewed by the commissioner or until adoption of the final Rule, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XI. Boxing and Wrestling

Chapter 3. Professional Boxing

§305. Contestant

A. - B.1.c. ...

d. boxers with breast implants are required to submit to the commission a release to compete with breast implants. Each release will be submitted on an annual basis.

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 35:53 (January 2009), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:756 (April 2010), LR 39:

Chapter 7. Mixed Technique Events

§707. Safety

A. MTE fighters with breast implants are required to submit to the commission a release to compete with breast implants. Each release will be submitted on an annual basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 39:

Addie L. Fields
Administrative Assistant

1310#011

DECLARATION OF EMERGENCY

Department of Health and Hospitals Behavior Analyst Board

Application Procedures and Board Fees (LAC 46:VIII.Chapter 3)

The Louisiana Department of Health and Hospitals, Louisiana Behavior Analyst Board has exercised the emergency provisions of the Administrative Procedures Act, specifically R.S. 49:953(B)(1), to create rules relative to the practice of behavior analysis, to be designated as Chapter 3, Application Procedures and Board Fees, of the board rules. This Emergency Rule, containing all new material, is effective October 8, 2013, and will remain in effect for a period of 120 days.

This action is necessary due to Act 351 of the 2013 Legislative Session, effective August 1, 2013, which created the Louisiana Behavior Analyst Board to safeguard life, health, property and the public welfare of this state, and in order to protect the people of this state against unauthorized, unqualified, and improper application of applied behavior analysis. Act 351 created a licensure process for behavior analysts, certification for assistant behavior analysts and requires registration of line technicians in the best interest of public protection. There is no grandfathering clause in Act 351 and individuals are practicing behavior analysis in the community, therefore there is insufficient time to promulgate these rules under the usual Administrative Procedures Act rulemaking process. However, a Notice of Intent to adopt a permanent Rule will be promulgated in connection with the proposed adoption of Emergency Rules on this subject.

Title 46

PROFESSIONAL AND OCCUPATIONS STANDARDS

Part VIII. Behavior Analysts

Chapter 3. Application Procedures and Board Fees

§301. Application Procedures for Licensure/State Certification/Registration

A. Application and/or Registration

1. An application for a license as a behavior analyst, state certified assistant behavior analyst or registration as a line technician may be submitted after the requirements in RS 37:3706-37:3708 are met.

2. Upon submission of application or registration on the forms provided by the board, accompanied by such fee determined by the board, the applicant must attest and acknowledge that the:

a. information provided to the board is true, correct and complete to the best of his knowledge and belief; and

b. the board reserves the right to deny an application in accordance with R.S. 37:3706-R.S. 37:3708, if the application or any application materials submitted for consideration contain misrepresentations or falsifications.

3. An applicant, who is denied licensure based on the information submitted to the board, may reapply to the board after one year, and having completed additional training, if necessary and having met the requirements of law as defined in the rules and regulations adopted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706-3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 39:

§302. Licensure of Behavior Analysts

A. The applicant for licensure as a behavior analyst shall:

1. submit notarized application along with appropriate fee pursuant to §305;

2. provide proof of a masters degree by requesting official transcripts from accredited university;

3. submit verification of successful passage of a national exam administered by a nonprofit organization accredited by the National Commission for Certifying Agencies and the National Standards Institute to credential professional practitioners of behavior analysis related to the principles and practice of the profession of behavior analysis that is approved by the board;

4. take and successfully pass the Louisiana Jurisprudence Exam issued by the board;

5. complete a criminal background check as approved by the board; and

6. provide proof of good moral character as approved by the board

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 39:

§303. Certification of State Certified Assistant Behavior Analysts

A. The applicant for certification as a state certified assistant behavior analyst should:

1. submit notarized application along with appropriate fee pursuant to Section 305;

2. provide proof of a bachelors degree by requesting official transcripts from accredited university;

3. submit verification of successful passage of a national exam administered by a nonprofit organization accredited by the National Commission for Certifying Agencies and the National Standards Institute to credential professional practitioners of behavior analysis related to the principles and practice of the profession of behavior analysis that is approved by the board;

4. take and successfully pass the Louisiana Jurisprudence Exam issued by the board;

5. complete a criminal background check approved by the board;

6. provide proof of good moral character as approved by the board; and

7. provide proof of supervision by a Louisiana licensed behavior analyst on the form required by the board.

If there is more than one supervisor, a form must be submitted for each supervisor.

B. If the supervision relationship between a Louisiana licensed behavior analyst and state certified assistant behavior analyst ends, both parties are responsible for notifying the board in writing, within ten calendar days of the termination of the arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3707.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 39:

§304. Registration of Line Technicians

A. A Louisiana licensed behavior analyst must register with the board all line technicians functioning under their authority and direction. It is the responsibility of both the licensed behavior analyst and line technician to submit registration paperwork for each supervisory relationship. The registration must be completed on the form provided by the board along with payment of the appropriate fee pursuant to §305.

B. A line technician must complete a criminal background check approved by the board.

C. If the supervision relationship between a Louisiana licensed behavior analyst and line technician ends, both parties are responsible for notifying the board in writing, within ten calendar days of the termination of the arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 39:

§305. Licensing and Administrative Fees

A. Licensing Fees

Application for Licensed Behavior Analyst	\$400
Application for State Certified Assistant Behavior Analyst	\$250
Registration for Line Technicians	\$50
Temporary Licensure	\$125
Annual Renewal – Behavior Analyst	\$400
Annual Renewal - Assistant Behavior Analyst	\$250
Annual Renewal - Line Technicians	\$50
Jurisprudence Examination	\$75
Criminal Background Check	\$50

B. Administrative Fees

Late fees	\$50
Duplicate copy of license	\$15
Official Name Change on License	\$25
License Verification	\$15
Insufficient Check Fee	\$15
Copies of documents	\$2/page

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3714.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 39:

Kelly Parker
Executive Director

1310#007

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Board of Pharmacy**

Compounding for Prescriber Use
(LAC 46:LIII.2535)

The Louisiana Board of Pharmacy is exercising the emergency provisions of the Administrative Procedure Act, specifically at R.S. 49:953(B), to amend certain portions of its rules permitting pharmacists to compound medications intended for administration by practitioners without the necessity of a patient-specific prescription.

The board has taken note of the recent tragedies associated with fungal meningitis traced to a compounding pharmacy in Massachusetts. Further, the board has learned there are other similar types of pharmacies operating across the country that are licensed to do business in Louisiana. Some of these pharmacies specialize in the large-scale preparation of drug products as opposed to compounding medications pursuant to patient-specific prescriptions.

The preparation of drug products intended for use in the general population in the United States is governed by federal laws and rules administered by the federal Food and Drug Administration (FDA). Drug manufacturers are credentialed and regulated by that federal agency, and their manufacturing activities are required to comply with a set of quality and safety standards generally known as current Good Manufacturing Practices (cGMP). There are provisions within the federal laws and rules that permit state licensed pharmacies to prepare drug products in response to patient specific prescriptions. Louisiana-licensed pharmacies engaged in the compounding of drug preparations in response to such prescriptions are required to comply with the set of quality and safety standards published in the United States Pharmacopeia (USP). By comparison, the USP standards are less stringent than the cGMP standards.

The board’s current rule permitting pharmacies to compound products for prescriber use without a patient-specific prescription contain no limits on products prepared by pharmacies intended for that general use. As evidenced by the tragedies referenced earlier, there are risks associated with pharmacies engaged in manufacturing activities while adhering to compounding standards. In an effort to mitigate that risk for Louisiana residents, the board proposes to limit a pharmacy’s product preparation intended for general use (including prescriber use) to 10 percent of its total dispensing and distribution activity. With respect to a pharmacy’s total dispensing and distribution activity for Louisiana residents, the board proposes a minimum of ninety percent be accomplished in response to patient-specific prescriptions and no more than ten percent for prescriber use in response to purchase orders.

The board has determined this Emergency Rule is necessary to prevent imminent peril to the public health, safety, and welfare. The original declaration of emergency was effective January 31, 2013, was re-issued on May 29, and is scheduled to expire September 29. Although the board

has initiated the promulgation process necessary to finalize the proposed Rule, it is necessary to re-issue the emergency rule to provide the necessary time to complete the promulgation process. Therefore, the board has re-issued the declaration of emergency, effective September 27, 2013. The Emergency Rule shall remain in effect for the maximum time period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever shall first occur.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIII. Pharmacists

Chapter 25. Prescriptions, Drugs, and Devices

Subchapter C. Compounding of Drugs

§2535. General Standards

A. - C. ...

D. Compounding for Prescriber's Use. Pharmacists may prepare practitioner administered compounds for a prescriber's use with the following requirements:

1 - 3. ...

4. A pharmacy may prepare such products not to exceed ten percent of the total number of drug dosage units dispensed and distributed by the pharmacy on an annual basis.

E. ...

F. Compounding Commercial Products Not Available. A pharmacy may prepare a copy of a commercial product when that product is not available as evidenced by either of the following:

1. products appearing on a website maintained by the federal Food and Drug Administration (FDA) and/or the American Society of Health-System Pharmacists (ASHP).

2. products temporarily unavailable from distributors, as documented by invoice or other communication from the distributor.

G. Labeling of Compounded Products

1. For patient-specific compounded products, the labeling requirements of R.S. 37:1225, or its successor, as well as this Chapter, shall apply.

2. All practitioner administered compounds shall be packaged in a suitable container with a label containing, at a minimum, the following information:

- a. pharmacy's name, address, and telephone number;
- b. practitioner's name;
- c. name of preparation;
- d. strength and concentration;
- e. lot number;
- f. beyond use date;
- g. special storage requirements, if applicable;
- h. assigned identification number; and
- i. pharmacist's name or initials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 23:1316 (October

1997), amended LR 29:2105 (October 2003), effective January 1, 2004, amended LR 39:

Malcolm J. Broussard
Executive Director

1310#021

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Coordinated Care Network
(LAC 50:I.3103-3109, 3303 and 3307)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.3103-3109, §3303 and §3307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which implemented a coordinated system of care in the Medicaid Program designed to improve performance and health care outcomes through a healthcare delivery system called coordinated care networks, also known as the BAYOU HEALTH Program (*Louisiana Register*, Volume 37, Number 6).

The department promulgated an Emergency Rule which amended the provisions of the June 20, 2011 Rule to revise the BAYOU HEALTH Program enrollment process to implement immediate auto-assignment of pregnant women whose Medicaid eligibility is limited to prenatal, delivery and post-partum services. Act 13 of the 2012 Regular Session of the Louisiana Legislature eliminated the CommunityCARE Program. This Emergency Rule also amended these provisions to align the BAYOU HEALTH Program with the directives of Act 13 by removing provisions relative to the former CommunityCARE Program (*Louisiana Register*, Volume 38, Number 8). The department promulgated an Emergency Rule which amended the August 1, 2012 Emergency Rule to clarify the provisions for enrollment (*Louisiana Register*, Volume 38, Number 12). The department promulgated an Emergency Rule which amended the recipient participation provisions governing the coordinated care networks in order to include health care services provided to LaCHIP Affordable Plan recipients in the BAYOU HEALTH Program (*Louisiana Register*, Volume 38, Number 12).

The department promulgated an Emergency Rule which amended the provisions of the November 29, 2012 Emergency Rule in order to revise the formatting of these provisions as a result of the January 1, 2013 Emergency Rule governing the coordinated care network (*Louisiana Register*, Volume 39, Number 3). This Emergency Rule is

being promulgated to continue the provisions of the March 20, 2013 Emergency Rule. This action is being taken to promote the health and welfare of pregnant women by ensuring their immediate access to quality health care services.

Effective November 17, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the coordinated care network.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 31. Coordinated Care Network

§3103. Recipient Participation

A. - B.1.b.v. ...

NOTE: Repealed.

C. - D.1.i. ...

j. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

k. Repealed.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 39:

§3105. Enrollment Process

A. - D.1. ...

2. The CCN and its providers shall be required to register all births through the Louisiana Electronic Event Registration System (LEERS) administered by DHH/Vital Records Registry and complete any other Medicaid enrollment form required by DHH.

E. - E.1. ...

2. New recipients, excluding those whose Medicaid eligibility is predicated upon determination of pregnancy, shall be given no less than 30 calendar days from the postmark date of an enrollment form mailed by the enrollment broker to select a CCN and primary care provider (PCP).

a. ...

3. Pregnant recipients with Medicaid eligibility limited to prenatal, delivery, and post-partum services will immediately be automatically assigned to a CCN by the enrollment broker.

a. - d. Repealed.

4. The following provisions will be applicable for recipients who are mandatory or voluntary participants.

a. If there are two or more CCNs in a department designated service area in which the recipient resides, they shall select one.

b. If there is only one CCN in a department designated service area where the recipient resides, the recipient must choose either the CCN, Medicaid fee-for-service or an alternative Medicaid managed care program that coordinates care and which the department makes available in accordance with the promulgation of administrative Rules.

c. Recipients who fail to make a selection will be automatically assigned to a participating CCN in their area.

d. Recipients may request to transfer out of the CCN for cause and the effective date of enrollment shall be no later than the first day of the second month following the calendar month that the request for disenrollment is filed.

F. Automatic Assignment Process

1. The following participants shall be automatically assigned to a CCN by the enrollment broker in accordance with the department's algorithm/formula and the provisions of §3105.E:

a. mandatory CCN participants that fail to select a CCN and voluntary participants that do not exercise their option not to participate in the CCN program within the minimum 30 day window;

b. pregnant women with Medicaid eligibility limited to prenatal care, delivery, and post-partum services; and

c. other recipients as determined by the department.

2. CCN automatic assignments shall take into consideration factors including, but not limited to:

a. the potential enrollee's geographic parish of residence;

b. assigning members of family units to the same CCN;

c. previous relationships with a Medicaid provider;

d. CCN capacity; and

e. CCN performance outcome indicators (when available).

3. Neither the MCO model nor the shared savings model will be given preference in making automatic assignments.

4. CCN automatic assignment methodology shall be available to recipients upon request to the enrollment broker prior to enrollment.

G. - G.2.a. ...

b. selects a PCP within the CCN that has reached their maximum physician/patient ratio;

c. selects a PCP within the CCN that has restrictions/limitations (e.g. pediatric only practice); or

d. has been automatically assigned to the CCN due to eligibility limited to pregnancy-related services.

3. Members who do not proactively choose a PCP with a CCN will be automatically assigned to a PCP by the CCN. The PCP automatically assigned to the member shall be located within geographic access standards of the member's home and/or best meets the needs of the member. Members for whom a CCN is the secondary payor will not be assigned to a PCP by the CCN, unless the members request that the CCN do so.

G.4. - H.1. ...

2. The 90 day option to change is not applicable to CCN linkages as a result of open enrollment.

I. Annual Open Enrollment

1. The department will provide an opportunity for all CCN members to retain or select a new CCN during an open enrollment period. Notification will be sent to each CCN member at least 60 days prior to the effective date of the annual open enrollment. Each CCN member shall receive information and the offer of assistance with making informed choices about CCNs in their area and the availability of choice counseling.

2. ...

3. During the open enrollment period, each Medicaid enrollee shall be given the option to either remain in their existing CCN or select a new CCN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1574 (June 2011), amended LR 39:

§3107. Disenrollment and Change of Coordinated Care Network

A.- F.1.j. ...

k. member enrolls in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

G - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1575 (June 2011), amended LR 39:

§3109. Member Rights and Responsibilities

A. - A.11. ...

B. Members shall have the freedom to exercise the rights described herein without any adverse effect on the member’s treatment by the department or the CCN, or its contractors or providers.

C. - C.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1576 (June 2011), amended LR 39:

Chapter 33. Coordinated Care Network Shared Savings Model

§3303. Shared Savings Model Responsibilities

A. - R.4. ...

a. immediately notifying the department if he or she has a Workman’s Compensation claim, a pending personal injury or medical malpractice law suit, or has been involved in an auto accident;

R.4.b. - T.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1578 (June 2011), amended LR 39:

§3307. Reimbursement Methodology

A. - C. ...

1. The CCN-S may reimburse the PCP a monthly base case management fee for each enrollee assigned to the PCP.

2. ...

3.-3.b. Repealed.

D. - F. ...

1. The reconciliation shall compare the actual aggregate cost of authorized/preprocessed services as specified in the contract and include the enhanced primary care case management fee for dates of services in the reconciliation period, to the aggregate Per Capita Prepaid Benchmark (PCPB).

2. - 5.c....

6. In the event the CCN-S exceeds the PCPB in the aggregate (for the entire CCN-S enrollment) as calculated in the final reconciliation, the CCN-S will be required to refund up to 50 percent of the total amount of the enhanced primary care case management fees paid to the CCN-S during the period being reconciled.

7. ...

a. Due to federally mandated limitations under the Medicaid State Plan, shared savings will be limited to five percent of the actual aggregate costs including the enhanced primary care case management fees paid. Such amounts shall be determined in the aggregate and not for separate enrollment types.

b. Repealed.

8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1581 (June 2011), amended LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#052

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Disproportionate Share Hospital Payments
Public-Private Partnerships
(LAC 50:V.Chapter 29)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 29 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing disproportionate share hospital (DSH) payments for non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership

initiative. This Emergency Rule is being promulgated to continue the provisions of the November 1, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective October 29, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to establish DSH payments to non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 29. Public-Private Partnerships

§2901. General Provisions

A. Qualifying Criteria. Effective for dates of service on or after November 1, 2012 a hospital may qualify for this category by being:

1. a non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility; or

2. a non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#053

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Disproportionate Share Hospital Payments
Public-Private Partnerships
North and Central Louisiana Areas
(LAC 50:V.2903)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.2903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing disproportionate share hospital (DSH) payments for non-state-owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative.

The department promulgated an Emergency Rule which amended the provisions governing DSH payments for hospitals participating in public-private partnerships to establish payments for hospitals located in the following areas: 1) Houma; 2) Lafayette; 3) Lake Charles; and 4) New Orleans (*Louisiana Register*, Volume 39, Number 7). The department promulgated an Emergency Rule which amended the provisions of the June 27, 2013 Emergency Rule to correct the percentage for DSH payments to hospitals located in the Lafayette area (*Louisiana Register*, Volume 39, Number 7).

The department now proposes to amend the provisions governing DSH payments for hospitals participating in public-private partnerships to establish payments for hospitals located in the following areas: 1) Shreveport; 2) Monroe; and 3) Bogalusa. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$193,843,317 for state fiscal year 2013-2014.

Effective October 1, 2013 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the DSH Program to establish payments to additional hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 29. Public-Private Partnerships

§2903. Payment Methodology

A. - D.4. Reserved.

E. Shreveport Area Cooperative Endeavor Agreement

1. Effective for dates of service on or after October 1, 2013, a state-owned or operated hospital in Shreveport that has transferred its management and operations to a non-state owned hospital participating in a public-private partnership shall be eligible for payment of 100 percent of its uncompensated care costs.

2. Qualifying hospitals shall submit costs and patient specific data in a format specified by the department. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

3. The first payment of each fiscal year will be made by October 25 and will be 85 percent of the annual estimate. The remainder of the payment will be made by June 30 of each year.

F. Monroe Area Cooperative Endeavor Agreement

1. Effective for dates of service on or after October 1, 2013, a state-owned or operated hospital in Monroe that has transferred its management and operations to a non-state owned hospital participating in a public-private partnership shall be eligible for payment of 100 percent of its uncompensated care costs.

2. Qualifying hospitals shall submit costs and patient specific data in a format specified by the department. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

3. The first payment of each fiscal year will be made by October 25 and will be 85 percent of the annual estimate. The remainder of the payment will be made by June 30 of each year.

G. Bogalusa Area Cooperative Endeavor Agreement

1. Effective for dates of service on or after January 1, 2014, a state-owned or operated hospital in Bogalusa that has transferred its management and operations to a non-state owned hospital participating in a public-private partnership shall be eligible for payment of 100 percent of its uncompensated care costs.

2. Qualifying hospitals shall submit costs and patient specific data in a format specified by the department. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

3. The first payment will be made by January 15, 2014 and will be 80 percent of one-half of the annual estimate. The first payment of each subsequent fiscal year will be made by October 15 and will be 80 percent of the annual estimate. The remainder of the payment will be made by June 30 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#012

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Disproportionate Share Hospital Payments
Public-Private Partnerships
South Louisiana Area
(LAC 50:V.2903)**

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.2903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing disproportionate share hospital (DSH) payments for non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative.

The department promulgated an Emergency Rule which amended the provisions governing DSH payments for hospitals participating in public-private partnerships to establish payments for hospitals located in the following areas: 1) Houma; 2) Lafayette; 3) Lake Charles; and 4) New Orleans (*Louisiana Register*, Volume 39, Number 7).

The department promulgated an Emergency Rule which amended the provisions of the June 27, 2013 Emergency Rule to correct the percentage for DSH payments to hospitals located in the Lafayette area (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 6, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective November 4, 2013 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the DSH Program which established payments to additional hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 29. Public-Private Partnerships

§2903. Payment Methodology

A. Houma Area Cooperative Endeavor Agreement

1. Effective for dates of service on or after June 27, 2013, a state-owned or operated hospital in Houma that has transferred its management and operations to a non-state owned hospital participating in a public-private partnership shall be eligible for payment of 100 percent of its uncompensated care costs.

2. Qualifying hospitals shall submit costs and patient specific data in a format specified by the department. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

3. The first payment of each fiscal year will be made by October 15 and will be 85 percent of the annual estimate. The remainder of the payment will be made by June 30 of each year.

B. Lafayette Area Cooperative Endeavor Agreement

1. Effective for dates of service on or after June 27, 2013, a state-owned or operated hospital in Lafayette that has transferred its management and operations to a non-state owned hospital participating in a public-private partnership shall be eligible for payment of 100 percent of its uncompensated care costs.

2. Qualifying hospitals shall submit costs and patient specific data in a format specified by the department.

3. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

4. The first payment of each fiscal year will be made October 15 and will be 80 percent of the annual estimate. The remainder of the payment will be made by June 30 of each year.

C. Lake Charles Area Cooperative Endeavor Agreement

1. Effective for dates of service on or after June 27, 2013, a non-state owned or operated hospital that assumes the management and operation of services at a facility in Lake Charles where such services were previously provided by a state-owned and operated facility shall be eligible for payment of 100 percent of uncompensated care costs.

2. Qualifying hospitals shall submit costs and patient specific data in a format specified by the department.

3. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

4. The first payment of each fiscal year will be made by October 15 and will be 85 percent of the annual estimate. The remainder of the payment will be made by June 30 of each year.

D. New Orleans Area Cooperative Endeavor Agreement

1. Effective for dates of service on or after June 27, 2013, a state-owned or operated hospital in New Orleans that has transferred its management and operations to a non-state owned hospital participating in a public-private partnership shall be eligible for payment of 100 percent of its uncompensated care costs.

2. Qualifying hospitals shall submit costs and patient specific data in a format specified by the department.

3. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

4. The first payment of each fiscal year will be made by October 15 and will be 85 percent of the annual estimate. The remainder of the payment will be made by June 30 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#054

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and**

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice
Allocation of Waiver Opportunities
for Chisholm Class Members
(LAC 50:XXI.11103, 11107,
11303, Chapter 115, and 11703)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11103, §11107, §11303, Chapter 115, and §11703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Children's Choice Waiver to clarify the provisions of the waiver and to adopt provisions for a self-direction initiative which will allow participants and their families to receive coordination of Children's Choice services through a direct support professional rather than a licensed enrolled provider agency (*Louisiana Register*, Volume 39, Number 9).

The department now proposes to amend the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities to Medicaid-eligible children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert class*

action litigation (hereafter referred to as Chisholm class members) who have a diagnosis of pervasive developmental disorder or autism spectrum disorder, and are in need of applied behavioral analysis (ABA) services. This Emergency Rule shall also adopt criteria governing the provision of ABA services to Chisholm class members.

This action is being taken to comply with the judge's order that ABA services be provided to Chisholm class members, and to avoid imminent peril to the public health and welfare of Chisholm class members who are in immediate need of ABA services until such time as a 1915(i) Medicaid state plan is approved by the Centers for Medicare and Medicaid Services. It is estimated that implementation of this Emergency Rule will result in an increase in expenditures in the Children's Choice Waiver Program by approximately \$9,523,396 for state fiscal year 2013-14.

Effective September 19, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver, and adopts criteria governing the provision of ABA services to Chisholm class members.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 111. General Provisions

§11103. Recipient Qualifications

A. - C. ...

D. Children's Choice Waiver services shall also be available to children who have been identified as Chisholm class members and have a clinically documented diagnosis of pervasive developmental disorder or autism spectrum disorder, and who are in need of applied behavioral analysis (ABA) services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 39:2498 (September 2013), LR 39:

§11107. Allocation of Waiver Opportunities

A. The order of entry in the Children's Choice Waiver is first come, first served from a statewide list arranged by date of application for the Developmental Disabilities Request for Services Registry for the New Opportunities Waiver, with the exception of the Money Follows the Person Rebalancing Demonstration waiver opportunities which are allocated to demonstration participants only, and the reserved waiver opportunities which are allocated solely to Chisholm class members in need of ABA services.

A.1. - B.1.b. ...

C. - C.6. Reserved.

D. Effective September 19, 2013, 165 Children's Choice Waiver opportunities shall be reserved for Chisholm class members who have a clinically documented diagnosis of pervasive developmental disorder or autism spectrum disorder and who are in need of applied behavioral analysis services. These waiver opportunities must only be filled by a class member and no alternate may utilize a Chisholm class member waiver opportunity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 39:

Chapter 113. Services

§11303. Service Definitions

A. - G.7.j. ...

H. Applied Behavioral Analysis-Based Therapy

1. - 2. ...

3. Services must be prior authorized.

I. - M.3.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 39:2498 (September 2013), LR 39:

Chapter 115. Providers

Subchapter A. Provider Qualifications

§11501. Support Coordination Providers and Service Providers

A. ...

B. Service Providers, with the exception of ABA service providers. Agencies licensed to provide personal care attendant services may enroll as a provider of Children's Choice services with the exception of support coordination services and therapy services. Agencies that enroll to be a Children's Choice service provider shall provide family support services, and shall either provide or subcontract for center-based respite, environmental accessibility adaptations, family training, and specialized medical equipment and supplies. Families of participants shall choose one service provider agency from those available in their region that will provide all waiver services, except support coordination.

1. - 1.b....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 26:2793 (December 2000), repromulgated for LAC, LR 28:1984 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2498 (September 2013), LR 39:

Subchapter B. Provider Requirements

§11523. Enrollment

A. Both support coordination and direct services providers, with the exception of ABA service providers, must comply with the requirements of this §11523 in order to participate as Children Choice providers. Agencies will not be added to the freedom of choice (FOC) list of available providers maintained by OCDD until they have received a Medicaid provider number.

B. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1984 (September 2002), amended LR 28:2533 (December 2002), repromulgated LR 29:38 (January 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), LR 39:

§11529. Professional Services Providers

A. - H. ...

I. Applied behavioral analysis-based therapy services must be provided by persons enrolled in the Medicaid Program who:

1. meet the following licensure and/or certification requirements:

a. be a board-certified behavior analyst (BCBA) through the Behavior Analyst Certification Board (BACB); or

b. hold a state-issued license, certificate, registration, credential, or other designation as a behavior analyst; or

c. possess a master's degree or doctoral degree in psychology, social work, professional counseling, or other human services related field, with coursework that includes, at a minimum, 40 hours of coursework in behavior analysis, behavior management theory, techniques, interventions and ethics, and autism spectrum disorders; and

d. at a minimum, one year (1,500) hours supervised clinical experience inclusive of:

i. a minimum of one year of direct care services to children; and

ii. a minimum of one year direct care utilizing applied behavior analysis, behavior techniques, interventions and monitoring of behavior plan implementation; and

iii. experience must have included work with individuals with autism spectrum disorders;

2. are covered by professional liability insurance to limits of \$1,000,000 per occurrence, \$1,000,000 aggregate;

3. have no sanctions or disciplinary actions on BCBA or BCBA-D certification and/or state licensure;

4. have no Medicare/Medicaid sanctions and are not excluded from participation in federally-funded programs (OIG-LEIE listing, System for Award Management (SAM) listing and state Medicaid sanctions listings); and

5. must have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the behavior analyst master's/doctoral is currently working and residing:

a. evidence of this background check shall be provided by the behavioral analyst master's/doctoral or by the employer;

b. criminal background checks must be performed at the time of hire and at least every five years thereafter.

J. Behavior Analyst—Bachelor's Level

1. Behavior analyst bachelor's level providers must meet one of the following criteria:

a. be a board-certified assistant behavior analyst (BCaBA) through the BACB; or

b. hold a state-issued certificate, registration, credential, or other designation as a behavior analyst-bachelor's level.

2. Behavior analyst bachelor's level providers must work under the supervision of a behavior analyst masters/doctoral professional. This supervisory relationship must be documented in writing.

3. The provider must be covered by professional liability insurance to limits of \$1,000,000 per occurrence, \$1,000,000 aggregate through their employer or group (if not professional liability insurance, then covered under general liability insurance through employer or group).

4. The provider must have no sanctions or disciplinary actions if state-certified or board-certified by the BACB.

5. The provider must not have Medicaid or Medicare sanctions or be excluded from participation in federally-funded programs (OIG-LEIE listing, System for Award Management (SAM) listing and state Medicaid sanctions listings).

6. The provider must have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the behavioral analyst bachelor's level is currently working and residing.

a. Evidence of this background check shall be provided by the employer.

b. Criminal background checks must be performed at the time of hire and at least every five years thereafter.

K. Enrolled providers may employ support staff who meet the following requirements to assist in the delivery of ABA services.

1. Applicants must meet one of the following criteria:

a. possess a master's degree;

b. be a registered nurse (RN) or licensed practical nurse (LPN) without a bachelor's degree;

c. possess a bachelor's degree; or

d. have completed two years in psychology education, social work, behavioral science, human development or related fields with no degree.

2. Providers must have 40 hours minimum in applied behavior analysis by a recognized organization such as:

a. a United States or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial or national accrediting body;

b. a Joint Commission or Commission on Accreditation of Rehabilitation Facilities or accredited health care facility;

c. a private agency whose primary business activity is the delivery of services to children with developmental disabilities and whose governing board includes one or more BCBA's; or

d. web-based instruction provided by an accredited institution of higher education.

3. Behavior analyst support staff must work under the supervision of a behavior analyst masters/doctoral or behavior analyst bachelors level who is themselves supervised by a behavior analyst masters/doctoral practitioner.

a. No fewer than two hours every two weeks of formal, documented supervision must be provided.

b. The supervisory relationship must be described in a formal, written document.

4. Applicants must meet all of the following requirements:

a. covered by professional liability insurance to limits of \$1,000,000 per occurrence, \$1,000,000 aggregate through their employer or group (if not professional liability insurance, then covered under general liability insurance through employer or group);

b. may not have Medicaid/Medicare sanctions or be excluded from participation in federally-funded programs (OIG-LEIE listing, system for award management (SAM) listing and state Medicaid sanctions listings); and

c. must have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the support staff is currently working and residing.

i. Evidence of this background check is provided by the employer. Criminal background checks must be performed at the time of hire and at least every five years thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2502 (September 2013), amended LR 39:

Chapter 117. Crisis Provisions

§11703. Crisis Designation Criteria

A. - A.5. ...

B. Exhausting available funds through the use of therapies, with the exception of ABA, environmental accessibility adaptations, and specialized medical equipment and supplies does not qualify as justification for crisis designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1986 (September 2002), amended LR 29:704 (May 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2503 (September 2013), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#010

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers

Children's Choice

Allocation of Waiver Opportunities

for Chisholm Class Members

(LAC 50:XXI.Chapter 111, 11301-11303 and Chapter 115)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.Chapter 111, §§11301-§11303 and Chapter 115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Children's Choice Waiver to clarify the provisions of the waiver and to adopt provisions for a self-direction initiative which will allow participants and their families to receive coordination of Children's Choice services through a direct support professional rather than a licensed enrolled provider agency (*Louisiana Register*, Volume 39, Number 9).

The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities to Medicaid eligible children identified in the Melanie Chisholm, et al vs. Kathy Kliebert class action litigation (hereafter referred to as Chisholm class members) who have a diagnosis of Pervasive Developmental Disorder or Autism Spectrum Disorder, and are in need of Applied Behavioral Analysis (ABA) services. This Emergency Rule also adopted criteria governing the provision of ABA services to Chisholm class members (*Louisiana Register*, Volume 39, Number 10).

The department now proposes to amend the provisions of the September 19, 2013 Emergency Rule governing the Children's Choice Waiver in order to clarify the provisions for the allocation of waiver opportunities and the criteria governing the provision of ABA services to eligible Chisholm class members. This action is being taken to comply with the judge's order that ABA services be provided to Chisholm class members, and to avoid imminent peril to the public health and welfare of Chisholm class members who are in immediate need of ABA services until such time as a 1915(i) Medicaid State Plan or other Medicaid State Plan service is approved by the Centers for Medicare and Medicaid Services.

Effective October 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the September 19, 2013 Emergency Rule governing the allocation of opportunities in the Children's Choice Waiver which adopts criteria governing the provision of ABA services to Chisholm class members.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 111. General Provisions

§11103. Recipient Qualifications

A. - B. ...

C. Children who reach their nineteenth birthday while participating in the Children's Choice Waiver will transfer into an appropriate waiver for adults as long as they remain eligible for waiver services, with the exception of the reserved waiver opportunities allocated to Chisholm class members in need of Applied Behavioral Analysis (ABA) services who have received a Children's Choice waiver slot. Their name will be returned to the Developmental Disabilities Request for Services Registry with the original date of request.

D. Children's Choice Waiver services shall also be available to children who have been identified as Chisholm class members who are on the Development Disabilities Request for Services Registry and have a clinically documented diagnosis of Pervasive Developmental Disorder or Autism Spectrum Disorder, and who are in need of Applied Behavioral Analysis (ABA) services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), LR 39:2498 (September 2013), LR 39:

§11104. Admission Denial or Discharge Criteria

A. - A.8.c. ...

B. Children who reach their nineteenth birthday while participating in the Children's Choice Waiver will transfer into an appropriate waiver for adults as long as they remain eligible for waiver services. Participants in the ABA reserved capacity group will not automatically transfer into a New Opportunities Waiver slot for adults upon reaching their nineteenth birthday. They will return to the Request for services Registry with their original request date unless otherwise indicated.

C. Once ABA services are available as Medicaid State Plan services, Chisholm class members who received a waiver opportunity because they were in need of ABA services will be discharged from the waiver with no right to an administrative appeal. The Chisholm class members will be transferred to the Medicaid State Plan ABA services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2498 (September 2013), LR 39:

§11107. Allocation of Waiver Opportunities

A. The order of entry in the Children's Choice Waiver is first come, first served from a statewide list arranged by date of application for the Developmental Disabilities Request for Services Registry for the New Opportunities Waiver. Families shall be given a choice of accepting an opportunity in the Children's Choice Waiver or remaining on the DDRFSR for the NOW.

1. The only exceptions to the first come, first served allocation of waiver opportunities shall be for the:

a. Money Follows the Person Rebalancing Demonstration waiver opportunities which are allocated to demonstration participants only;

b. waiver opportunities which are allocated to children who have been determined to need more services than what is currently available through state funded family support services; and

c. the reserved waiver opportunities which are allocated solely to Chisholm class members in need of ABA services.

B. - B.1.b. ...

C. - C.6. Reserved.

D. Effective September 19, 2013, 165 Children's Choice Waiver opportunities shall be reserved for Chisholm class members who have a clinically documented diagnosis of Pervasive Developmental Disorder or Autism Spectrum Disorder and who are in need of Applied Behavioral Analysis services. These waiver opportunities must only be filled by a class member and no alternate may utilize a Chisholm class member waiver opportunity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), LR 39:

Chapter 113. Services

§11301. Service Cap

A. - C. ...

D. Effective August 1, 2012, Children's Choice services are capped at \$16,410 per individual per plan of care year.

1. The capped amount shall not apply to ABA services provided to persons entering the waiver under the reserved slots for Chisholm class members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:2157 (July 2011), LR 39:507 (March 2013), LR 39:2498 (September 2013), LR 39:

§11303. Service Definitions

A. - G.7.j. ...

H. Applied Behavioral Analysis-Based Therapy

1. - 2. ...

3. Services must be prior authorized.

I. - M.3.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 39:2498 (September 2013), LR 39:

Chapter 115. Providers

Subchapter A. Provider Qualifications

§11501. Support Coordination Providers and Service Providers

A. ...

B. Service Providers. Agencies licensed to provide personal care attendant services may enroll as a provider of Children's Choice services with the exception of support coordination services and therapy services, including ABA services. Agencies that enroll to be a Children's Choice service provider shall provide family support services, and shall either provide or subcontract for center-based respite, environmental accessibility adaptations, family training, and specialized medical equipment and supplies. Families of participants shall choose one service provider agency from those available in their region that will provide all waiver services, except support coordination, therapy services, ABA services, and family support services delivered through the self-direction model.

1. - 1.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, Bureau of Health Services Financing, repromulgated for LAC, LR 28:1984 (September 2002), LR 39:2501 (September 2013), LR 39:

Subchapter B. Provider Requirements

§11523. Enrollment

A. Both support coordination and direct services providers must comply with the requirements of this §11523 in order to participate as Children Choice providers, with the exception of ABA service providers who are exempt from the requirements of §11523.H. Agencies will not be added to the freedom of choice (FOC) list of available providers maintained by OCDD until they have received a Medicaid provider number.

B. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1984 (September 2002), amended LR 28:2533 (December 2002), repromulgated LR 29:38 (January 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), LR 39:

§11529. Professional Services Providers

A. - H. ...

I. Applied behavioral analysis-based therapy services must be provided by persons enrolled in the Medicaid Program who:

1. meet the following licensure and/or certification requirements:

a. be a board-certified behavior analyst (BCBA) through the Behavior Analyst Certification Board (BACB); or

b. be a currently Louisiana licensed psychologist, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, licensed addiction counselor, or advanced practice registered nurse, with coursework that includes, at a minimum, 40 hours of coursework in behavior analysis, behavior management theory, techniques, interventions and ethics, and autism spectrum disorders, and includes:

i. at a minimum, one year (1500 hours) of supervised clinical experience inclusive of:

(a) a minimum of one year of direct care services to children;

(b) a minimum of one year of direct care utilizing applied behavior analysis, behavior techniques, interventions, and monitoring of behavior plan implementation; and

(c) experience that must have included work with individuals with autism spectrum disorders; or

c. possess a master's degree or doctoral degree in psychology, social work, professional counseling, or other human services related field, with coursework that includes, at a minimum, 40 hours of coursework in behavior analysis, behavior management theory, techniques, interventions and ethics, and autism spectrum disorders; and

i. at a minimum, one year (1,500 hours) of supervised clinical experience inclusive of:

(a) a minimum of one year of direct care services to children; and

(b) a minimum of one year of direct care utilizing applied behavior analysis, behavior techniques, interventions and monitoring of behavior plan implementation; and

(c) experience that must have included work with individuals with autism spectrum disorders;

2. are covered by professional liability insurance to limits of \$1,000,000 per occurrence, \$1,000,000 aggregate;

3. have no sanctions or disciplinary actions on BCBA or BCBA-D certification and/or state licensure;

4. have no Medicare/Medicaid sanctions and are not excluded from participation in federally-funded programs (OIG-LEIE listing, system for award management (SAM) listing and state Medicaid sanctions listings); and

5. must have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the behavior analyst master's/doctoral is currently working and residing:

a. evidence of this background check shall be provided by the service provider or by his/her employer;

b. criminal background checks must be performed at the time of hire and at least every five years thereafter.

J. Behavior Analyst—Bachelor's Level

1. Behavior analyst Bachelor's Level providers must meet one of the following criteria:

a. be a board-certified assistant behavior analyst (BCaBA) through the BACB; or

b. hold a state-issued certificate, registration, credential, or other designation as a behavior analyst-bachelor's level.

2. Behavior analyst Bachelor's Level providers must work under the supervision of a service provider listed in §11529.I. This supervisory relationship must be documented in writing.

3. The provider must be covered by professional liability insurance to limits of \$1,000,000 per occurrence, \$1,000,000 aggregate through their employer or group (if not professional liability insurance, then covered under general liability insurance through employer or group).

4. The provider must have no sanctions or disciplinary actions if state-certified or board-certified by the BACB.

5. The provider must not have Medicaid or Medicare sanctions or be excluded from participation in federally-funded programs (OIG-LEIE listing, System for Award Management (SAM) listing and state Medicaid sanctions listings).

6. The provider must have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the behavioral analyst Bachelor's level is currently working and residing.

a. Evidence of this background check shall be provided by the employer.

b. Criminal background checks must be performed at the time of hire and at least every five years thereafter.

K. Enrolled providers may employ support staff who meet the following requirements to assist in the delivery of ABA services.

1. Applicants must meet one of the following criteria:

a. possess a Master's degree;

b. be a registered nurse (RN) or licensed practical nurse (LPN) without a bachelor's degree;

c. possess a bachelor's degree; or

d. have completed two years in psychology education, social work, behavioral science, human development or related fields with no degree.

2. Providers must have 40 hours minimum in applied behavior analysis by a recognized organization such as:

a. a United States or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial or national accrediting body;

b. a Joint Commission or Commission on Accreditation of Rehabilitation Facilities or accredited health care facility;

c. a private agency whose primary business activity is the delivery of services to children with developmental disabilities and whose governing board includes one or more BCBAs; or

d. web-based instruction provided by an accredited institution of higher education.

3. Behavior analyst support staff must work under the supervision of a behavior analyst Masters/Doctoral or behavior analyst Bachelors Level who is themselves supervised by a behavior analyst Masters/Doctoral practitioner.

a. No fewer than two hours every two weeks of formal, documented supervision must be provided.

b. The supervisory relationship must be described in a formal, written document.

4. Applicants must meet all of the following requirements:

a. covered by professional liability insurance to limits of \$1,000,000 per occurrence, \$1,000,000 aggregate through their employer or group (if not professional liability insurance, then covered under general liability insurance through their employer or group);

b. may not have Medicaid/Medicare sanctions or be excluded from participation in federally-funded programs (OIG-LEIE listing, System for Award Management (SAM) listing and state Medicaid sanctions listings); and

c. must have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the support staff is currently working and residing:

i. Evidence of this background check is provided by the employer. Criminal background checks must be performed at the time of hire and at least every five years thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#050

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Major Teaching Hospitals
Qualifying Criteria
(LAC 50:V.1301-1309)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1301-1309 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 347 of the 2009 Regular Session of the Louisiana Legislature revised the qualifying criteria for major teaching hospitals. In compliance with Act 347, the department

amended the provisions governing the qualifying criteria for major teaching hospitals and repromulgated the provisions of the March 20, 2000 Rule governing teaching hospitals in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 39, Number 2)*. The department promulgated an Emergency Rule which amended the provisions of the February 20, 2013 Rule governing the qualifying criteria for teaching hospitals in order to correlate with Medicare guidelines, and to clarify deadlines for submissions of qualifying documentation and provisions for conversion to private ownership (*Louisiana Register, Volume 39, Number 6*). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program to assure sufficient access to hospital services.

Effective October 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing inpatient hospital services rendered by non-rural, non-state hospitals designated as teaching hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 13. Teaching Hospitals

Subchapter A. General Provisions

§1301. Major Teaching Hospitals

A. The Louisiana Medical Assistance Program's recognition of a major teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the Liaison Committee on Medical Education (LCME). A major teaching hospital shall meet one of the following criteria:

1. be a major participant in at least four approved medical residency programs and maintain at least 15 intern and resident un-weighted full time equivalent positions. For purposes of this rule full time equivalent positions will be calculated as defined in 42 CFR 413.78. At least two of the programs must be in medicine, surgery, obstetrics/gynecology, pediatrics, family practice, emergency medicine or psychiatry; or

2. maintain at least 20 intern and resident un-weighted full time equivalent positions, with an approved medical residency program in family practice located more than 150 miles from the medical school accredited by the LCME. For purposes of this rule full time equivalent positions will be calculated as defined in 42 CFR 413.78.

B. For the purposes of recognition as a major teaching hospital, a facility shall be considered a "major participant" in a graduate medical education program if it meets the following criteria. The facility must participate in residency programs that:

1. require residents to rotate for a required experience;

a. - c. Repealed.

2. require explicit approval by the appropriate Residency Review Committee (RRC) of the medical school with which the facility is affiliated prior to utilization of the facility; or

a. - c. Repealed.

3. provide residency rotations of more than one sixth of the program length or more than a total of six months at the facility and are listed as part of an accredited program in the Graduate Medical Education Directory of the Accreditation Council for Graduate Medical Education (ACGME).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:324 (February 2013), amended LR 39:

§1303. Minor Teaching Hospitals

A. The Louisiana Medical Assistance Program's recognition of a minor teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the LCME. A minor teaching hospital shall meet the following criteria:

1. ...

2. maintain at least six intern and resident un-weighted full time equivalent positions. For purposes of this rule full time equivalent positions will be calculated as defined in 42 CFR 413.78.

B. For the purposes of recognition as a minor teaching hospital, a facility is considered to "participate significantly" in a graduate medical education program if it meets the following criteria. The facility must participate in residency programs that:

1. require residents to rotate for a required experience;

a. - c. Repealed.

2. require explicit approval by the appropriate Residency Review Committee of the medical school with which the facility is affiliated prior to utilization of the facility; or

a. - c.i. Repealed.

3. provide residency rotations of more than one sixth of the program length or more than a total of six months at the facility and are listed as part of an accredited program in the *Graduate Medical Education Directory* of the Accreditation Council for Graduate Medical Education.

a. If not listed, the sponsoring institution must have notified the ACGME, in writing, that the residents rotate through the facility and spend more than one sixth of the program length or more than a total of six months at the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:324 (February 2013), amended LR 39:

§1305. Approved Medical Residency Program

A. An approved medical residency program is one that meets one of the following criteria:

1. is approved by one of the national organizations listed in 42 CFR 415.152;

2. may count towards certification of the participant in a specialty or subspecialty listed in the current edition of either of the following publications:

a. the Directory of Graduate Medical Education Programs published by the American Medical Association, and available from American Medical Association, Department of Directories and Publications; or

b. the Annual Report and Reference Handbook published by the American Board of Medical Specialties, and available from American Board of Medical Specialties;

3. is approved by the Accreditation Council for Graduate Medical Education (ACGME) as a fellowship program in geriatric medicine; or

4. is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether the standard provides exceptions or exemptions.

B. - B.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:324 (February 2013), amended LR 39:

§1307. Graduate Medical Education

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:325 (February 2013), repealed LR 39:

§1309. Requirements for Reimbursement

A. Qualification for teaching hospital status shall be re-established at the beginning of each fiscal year.

B. To be reimbursed as a teaching hospital, a facility shall submit a signed "Certification For Teaching Hospital Recognition" form to the Bureau of Health Services, Supplemental Payments Section at least 30 days prior to the beginning of each state fiscal year or at least 30 days prior to the effective date of the conversion of a state owned and operated teaching hospital to private ownership in accordance with a Public/Private Partnership Cooperative Endeavor Agreement that was instituted to preserve graduate medical education training and access to healthcare services for indigent patients.

1. - 3. Repealed.

C. Each hospital which is reimbursed as a teaching hospital shall submit the following documentation with their Medicaid cost report filing:

1. - 2. ...

D. Copies of all affiliation agreements, contracts, payroll records and time allocations related to graduate medical education must be maintained by the hospital and available for review by the state and federal agencies or their agents upon request.

E. If it is subsequently discovered that a hospital has been reimbursed as a major or minor teaching hospital and did not qualify for that peer group for any reimbursement period, retroactive adjustment shall be made to reflect the correct peer group to which the facility should have been assigned. The resulting overpayment will be recovered through either immediate repayment by the hospital or recoupment from any funds due to the hospital from the department.

F. - G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:325 (February 2013), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Service Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#056

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Public-Private Partnerships
Reimbursement Methodology
(LAC 50:V.1703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services. Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative (*Louisiana Register*, Volume 39, Number 11). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient psychiatric hospital services provided by non-state owned hospitals participating in public-private partnerships (*Louisiana Register*, Volume 39, Number 1). In April 2013, the department promulgated an Emergency Rule to continue the provisions of the January 2, 2013 Emergency Rule (*Louisiana Register*, Volume 39, Number 4).

The department amended the provisions governing the reimbursement methodology for inpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or

reduced by a state-owned and operated facility to establish an interim per diem reimbursement (*Louisiana Register*, Volume 39, Number 4). In June 2013, the department determined that it was necessary to rescind the January 2, 2013 and the May 3, 2013 Emergency Rules governing Medicaid payments to non-state owned hospitals for inpatient psychiatric hospital services (*Louisiana Register*, Volume 39, Number 6). The department promulgated an Emergency Rule which amended the provisions of the April 15, 2013 Emergency Rule in order to revise the formatting of these provisions as a result of the promulgation of the June 1, 2013 Emergency Rule to assure that these provisions are promulgated in a clear and concise manner in the *Louisiana Administrative Code* (LAC) (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective November 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid payments for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 17. Public-Private Partnerships

§1703. Reimbursement Methodology

A. Reserved.

B. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows:

1. The inpatient reimbursement shall be reimbursed at 95 percent of allowable Medicaid costs. The interim per diem reimbursement may be adjusted not to exceed the final reimbursement of 95 percent of allowable Medicaid costs.

C. - E.3. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#059

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Public-Private Partnerships
South Louisiana Area
(LAC 50:V.1703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services. Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative (*Louisiana Register*, Volume 38, Number 11). The department promulgated an Emergency Rule which amended the provisions governing reimbursement for Medicaid payments for inpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state owned and operated facility (*Louisiana Register*, Volume 39, Number 4). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient services provided by non-state owned hospitals participating in public-private partnerships to establish payments for hospitals located in the Lafayette and New Orleans areas (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the June 24, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective October 23, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 17. Public-Private Partnerships

§1703. Reimbursement Methodology

A. Reserved.

B. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows:

1. the inpatient reimbursement shall be reimbursed at 95 percent of allowable Medicaid costs. The interim per diem reimbursement may be adjusted not to exceed the final reimbursement of 95 percent of allowable Medicaid costs.

C. Baton Rouge Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals (DHH) shall enter into a cooperative endeavor agreement (CEA) with a non-state owned and operated hospital to increase its provision of inpatient Medicaid hospital services by providing services that were previously delivered and terminated by the state-owned and operated facility in Baton Rouge.

2. A quarterly supplemental payment shall be made to this qualifying hospital for inpatient services based on dates of service on or after April 15, 2013. Payments shall be made quarterly based on the annual upper payment limit calculation per state fiscal year. Payments shall not exceed the allowable Medicaid charge differential. The Medicaid inpatient charge differential is the Medicaid inpatient charges less the Medicaid inpatient payments (which includes both the base payments and supplemental payments).

3. The qualifying hospital shall provide quarterly reports to DHH that will demonstrate that, upon implementation, the annual Medicaid inpatient quarterly payments do not exceed the annual Medicaid inpatient charges per 42 CFR 447.271. Before the final quarterly payment for each state fiscal year the quarterly reports will be reviewed and verified with Medicaid claims data. The final quarterly payment for each state fiscal year will be reconciled and will be adjusted to assure that the annual payment does not exceed the allowable Medicaid inpatient charge differential.

4. Inpatient services shall be reimbursed at 95 percent of allowable Medicaid costs. The interim per diem reimbursement may be adjusted not to exceed the final reimbursement of 95 percent of allowable Medicaid costs.

D. Lafayette Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals shall enter into a cooperative endeavor agreement with a non-state owned and operated hospital to increase its provision of inpatient Medicaid hospital services by assuming the management and operation of services at a facility in Lafayette where such services were previously provided by a state-owned and operated facility.

2. Effective for dates of service on or after June 24, 2013, a quarterly supplemental payment shall be made to this qualifying hospital for inpatient services. Payments shall be made quarterly based on the annual upper payment limit calculation per state fiscal year. Payments shall not exceed the allowable Medicaid charge differential. The Medicaid inpatient charge differential is the Medicaid inpatient charges less the Medicaid inpatient payments (which includes both the base payments and supplemental payments).

3. The qualifying hospital shall provide quarterly reports to DHH that will demonstrate that, upon implementation, the annual Medicaid inpatient quarterly payments do not exceed the annual Medicaid inpatient charges per 42 CFR 447.271. Before the final quarterly payment for each state fiscal year the quarterly reports will be reviewed and verified with Medicaid claims data. The final quarterly payment for each state fiscal year will be reconciled and will be adjusted to assure that the annual payment does not exceed the allowable Medicaid inpatient charge differential.

E. New Orleans Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals shall enter into a cooperative endeavor agreement with a non-state owned and operated hospital to increase its provision of inpatient Medicaid hospital services by assuming the management and operation of services at a facility in New Orleans where such services were previously provided by a state-owned and operated facility.

2. Effective for dates of service on or after June 24, 2013, a quarterly supplemental payment shall be made to this qualifying hospital for inpatient services. Payments shall be made quarterly based on the annual upper payment limit calculation per state fiscal year. Payments shall not exceed the allowable Medicaid charge differential. The Medicaid inpatient charge differential is the Medicaid inpatient charges less the Medicaid inpatient payments (which includes both the base payments and supplemental payments).

3. The qualifying hospital shall provide quarterly reports to DHH that will demonstrate that, upon implementation, the annual Medicaid inpatient quarterly payments do not exceed the annual Medicaid inpatient charges per 42 CFR 447.271. Before the final quarterly payment for each state fiscal year the quarterly reports will be reviewed and verified with Medicaid claims data. The final quarterly payment for each state fiscal year will be reconciled and will be adjusted to assure that the annual payment does not exceed the allowable Medicaid inpatient charge differential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O.

Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#057

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Public-Private Partnerships
Supplemental Payments
(LAC 50:V.Chapter 17)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 17 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative. This Emergency Rule is being promulgated to continue the provisions of the November 1, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective October 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to establish supplemental Medicaid payments for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 17. Public-Private Partnerships

§1701. Qualifying Hospitals

A. Non-State Privately Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall provide supplemental Medicaid payments for inpatient hospital services rendered by non-state privately owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

B. Non-State Publicly Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for inpatient hospital services rendered by non-state publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

C. Non-State Free-Standing Psychiatric Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for inpatient psychiatric hospital services rendered by non-state privately or publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately or publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured psychiatric hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§1703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.272.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#058

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Intermediate Care Facilities for Persons with Developmental Disabilities—Public Facilities
Reimbursement Methodology (LAC 50:VII.32969)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities (ICFs/DD) to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 39, Number 2). This Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*.

The department now proposes to amend the provisions governing the transitional rates for public facilities in order to redefine the period of transition. This action is being taken to protect the health and welfare of Medicaid recipients transitioning from public ICFs/DD. It is estimated that implementation of this Emergency Rule will have no impact on expenditures in the Medicaid Program for state fiscal year 2013-2014.

Effective October 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32969. Transitional Rates for Public Facilities

A. - A.4.a. ...

B. The transitional Medicaid reimbursement rate shall only be for the period of transition, which is defined as the term of the CEA or a period of four years, whichever is shorter.

C. - F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:326 (February 2013), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#013

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Hospice Services (LAC 50:XV.Chapter 33-35,
3701-3703, and Chapters 39-43)

The Department of Health and Hospitals, Bureau of Health Services Financing, amends LAC 50:XV.Chapters 33-35, §§3701-3703, and Chapters 39-43 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for hospice services provided to long-term care residents to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 9).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing hospice services in order to bring these provisions into compliance with the requirements of the Patient Protection and Affordable Care Act (PPACA) and also amended the provisions governing prior authorization for hospice services in order to control the escalating costs associated with the Hospice Program (*Louisiana Register*, Volume 38, Number 3). This Emergency Rule is being promulgated to continue the provisions of the May 1, 2012 Emergency Rule. This action is being taken to avoid sanctions from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for noncompliance with PPACA requirements, and to avoid a budget deficit in the medical assistance programs.

Effective November 15, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Hospice Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 3. Hospice

Chapter 33. Provider Participation

§3301. Conditions for Participation

A. Statutory Compliance

1. Coverage of Medicaid hospice care shall be in accordance with:

a. 42 USC 1396d(o); and

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:1024 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Chapter 35. Recipient Eligibility

§3501. Election of Hospice Care

A. - F. ...

G. Election Statement Requirements. The election statement must include:

1. identification of the particular hospice that will provide care to the individual;

2. the individual's or his/her legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness;

3. acknowledgment that certain Medicaid services, as set forth in §3503 are waived by the election;

4. the effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement; and

5. the signature of the individual or his/her legal representative.

H. Duration of Election. An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. remains in the care of a hospice;

2. does not revoke the election under the provisions of §3505; and

3. is not discharged from hospice in accordance with §3505.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1466 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§3503. Waiver of Payment for Other Services

A. - A.2.c. ...

B. Individuals who are approved to receive hospice may not receive any other non-waiver home and community-based services, such as long-term personal care services, while they are receiving hospice.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§3505. Revoking the Election of Hospice Care/Discharge

A. - A.4. ...

5. Re-election of Hospice Benefits. If an election has been revoked in accordance with the provisions of this §3505, the individual or his/her representative may at any time file an election, in accordance with §3501, for any other election period that is still available to the individual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Chapter 37. Provider Requirements

§3701. Requirements for Coverage

A. To be covered, a Certification of Terminal Illness must be completed as set forth in §3703, the election of hospice care form must be completed in accordance with §3501, and a plan of care must be established in accordance with §3705. A written narrative from the referring physician explaining why the patient has a prognosis of six months or less must be included in the certificate of terminal illness. prior authorization requirements stated in Chapter 41 of these provisions are applicable to all election periods.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§3703. Certification of Terminal Illness

A. - A.1.a. ...

b. For the first 90-day period of hospice coverage, the hospice must obtain a verbal certification no later than two calendar days after hospice care is initiated. If the verbal certification is not obtained within two calendar days following the initiation of hospice care, a written certification must be made within ten calendar days following the initiation of hospice care. The written certification and notice of election must be obtained before requesting prior authorization for hospice care. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day of certification, i.e., the date all certification forms are obtained.

c. For the subsequent periods, a written certification must be included in an approved prior authorization packet before a claim may be billed.

2. - 2.c....

d. If verbal certification is made, the referral from the physician shall be received by a member of the hospice interdisciplinary group (IDG). The entry in the patient's clinical record of the verbal certification shall include, at a minimum:

- i. - ii. ...
- iii. terminal diagnosis(es) and all other diagnosis(es);
- iv. - v. ...

3. Face-to-Face Encounter

a. A hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the third benefit period. The face-to-face encounter must occur prior to, but no more than 30 calendar days prior to, the third benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

b. The physician or nurse practitioner who performs the face-to-face encounter with the patient must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

4. Content of Certifications

a. Certification will be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. The certification must conform to the following requirements.

i. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

ii. Written clinical information and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification, as set forth in Subparagraph 4 of this Section.

iii. The physician must include a brief written narrative explanation of the clinical findings that support a life expectancy of six months or less as part of the certification and recertification forms, or as an addendum to the certification and recertification forms.

(a). The narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients.

(b). The narrative associated with the third benefit period recertification and every subsequent recertification must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of six months or less, and shall not be the same narrative as previously submitted.

b. All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

5. Sources of Certification

a. For the initial 90-day period, the hospice must obtain written certification statements as provided in §3703.A.1 from:

- i. ...
- ii. the individual's attending physician. The attending physician is a doctor of medicine or osteopathy and is identified by the individual, at the time he or she

elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

(a). The attending physician is the physician identified within the Medicaid system as the provider to which claims have been paid for services prior to the time of the election of hospice benefits.

b. ...

6. Maintenance of Records. Hospice staff must make an appropriate entry in the patient's clinical record as soon as they receive an oral certification and file written certifications in the clinical record.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Chapter 39. Covered Services

§3901. Medical and Support Services

A. – A.11.b.iv. ...

c. Inpatient Respite Care Day. An inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis, not to exceed five days in any one election period, to relieve the family members or other persons caring for the individual at home. An approved facility is one that meets the standards as provided in 42 CFR §418.98(b). This service cannot be delivered to individuals already residing in a nursing facility.

d. General Inpatient Care Day. A general inpatient care day is a day on which an individual receives general inpatient care in an inpatient facility that meets the standards as provided in 42 CFR §418.98(a) and for the purpose of pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care shall not exceed five days in any one election period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Chapter 41. Prior Authorization

§4101. Prior Authorization of Hospice Services

A. Prior authorization is required for all election periods as specified in §3501.C of this Subpart. The prognosis of terminal illness will be reviewed. A patient must have a terminal prognosis and not just certification of terminal illness. Authorization will be made on the basis that a patient is terminally ill as defined in federal regulations. These regulations require certification of the patient's prognosis, rather than diagnosis. Authorization will be based on objective clinical evidence contained in the clinical record which supports the medical prognosis that the patient's life expectancy is six months or less if the illness runs its normal course and not simply on the patient's diagnosis.

1. Providers shall submit the appropriate forms and documentation required for prior authorization of hospice services as designated by the department in the Medicaid Program's service and provider manuals, memorandums, etc.

B. Written Notice of Denial. In the case of a denial, a written notice of denial shall be submitted to the hospice, recipient, and nursing facility, if appropriate.

1. Claims will only be paid from the date of the Hospice Notice of Election if the prior authorization request is received within 10 days from the date of election and is approved. If the prior authorization request is received 10 days or more after the date on the Hospice notice of election, the approved begin date for hospice services is the date the completed prior authorization packet is received.

C. Appeals. If the hospice or the recipient does not agree with the denial of a hospice prior authorization request, the recipient, or the hospice on behalf of the recipient, can request an appeal of the prior authorization decision. The appeal request must be filed with the Division of Administrative Law within 30 days from the date of the postmark on the denial letter. The appeal proceedings will be conducted in accordance with the Administrative Procedure Act.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Chapter 43. Reimbursement

§4303. Levels of Care for Payment

A. - B.3. ...

C. Inpatient Respite Care. The inpatient respite care rate is paid for each day the recipient is in an approved inpatient facility and is receiving respite care (see §3901.A.11.c). Respite care may be provided only on an occasional basis and payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the day of discharge in a respite setting shall be at the routine home level-of-care discharged alive rate.

1. ...

2. Respite care may not be provided when the hospice patient is a nursing home resident, regardless of the setting, i.e., long-term acute care setting.

D. General Inpatient Care. Payment at the inpatient rate is made when an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care is a short-term level of care and is not intended to be a permanent solution to a negligent or absent caregiver. A lower level of care must be used once symptoms are under control. General inpatient care and nursing facility or intermediate care facility for persons with intellectual disabilities room and board cannot be reimbursed for the same recipient on the same covered days of service. Payment for general inpatient care may be made for a maximum of five days at a time, including the date of admission, but not counting the date of discharge. Payment for the day of discharge in a general inpatient setting shall be at the routine home level-of-care discharged alive rate.

1. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§4305. Hospice Payment Rates

A. - A.2. ...

a. The hospice is paid for other physicians' services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. The physician visit for the face-to-face encounter will not be reimbursed by the Medicaid Program.

b. - d.ii. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§4309. Limitation on Payments for Inpatient Care

A. ...

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient days (both for general inpatient care and inpatient respite care) for any one hospice recipient may not exceed five days per occurrence.

2. - 2.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#055

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services
Supplemental Payments
(LAC 50:XXVII.327 and 355)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.327 and §355 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security

Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. The department promulgated an Emergency Rule which established supplemental payments for governmental ambulance providers who render emergency medical transportation services to low income and needy patients in the state of Louisiana (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the provisions of the July 1, 2011 Emergency Rule to allow supplemental payments for all ambulance providers who render emergency medical transportation services to low income and needy patients (*Louisiana Register*, Volume 37, Number 7). The July 20, 2011 Emergency Rule was amended to allow supplemental payments to providers of air ambulance transportation services (*Louisiana Register*, Volume 37, Number 8). The department promulgated an Emergency Rule which rescinded and replaced the July 1, 2011, the July 20, 2011, and the August 20, 2011 Emergency Rules in order to promulgate clear and concise provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 37, Number 9). The department promulgated an Emergency Rule which amended the September 20, 2011 Emergency Rule to clarify the provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule which amended the December 20, 2011 Emergency Rule to further clarify the provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 38, Number 3). After consulting with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to secure approval of the corresponding State Plan Amendment, the department promulgated an Emergency Rule which amended the March 20, 2012 Emergency Rule to further clarify the provisions governing supplemental payments for emergency medical transportation services in order to ensure that the administrative Rule is consistent with the approved Medicaid State Plan (*Louisiana Register*, Volume 39, Number 4). This Emergency Rule is being promulgated to continue the provisions of the March 20, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to emergency ambulance services.

Effective November 17, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing supplemental payments for emergency medical transportation services rendered by ambulance providers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§327. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. a provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170 and a provider of the corresponding medical and remedial care and services in the approved Medicaid State Plan.
4. Repealed.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers.

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider identified to receive supplemental payments, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under Paragraph E.2.

4. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under Paragraph E.2.

5. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under Paragraph E.3 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under Paragraph E.4.

6. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under Paragraph E.5.

7. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from Paragraph E.6.

8. The department will reimburse providers based on the following criteria.

a. For ambulance service providers identified in Paragraph E.1 located in large urban areas and owned by governmental entities, reimbursement will be up to 100 percent of the provider's average commercial rate calculated in Paragraph E.7.

b. For all other ambulance service providers identified in Paragraph E.1., reimbursement will be up to 80 percent of the provider's average commercial rate calculated in Paragraph E.7.

9. - 17. Repealed.

F. Calculation of Average Commercial Rate. The supplemental payment will be determined in a manner to bring payments for these services up to the average commercial rate level.

1. For purposes of these provisions, the average community rate level is defined as the average amount payable by the commercial payers for the same services.

2. The state will align the paid Medicaid claims with the Medicare fees for each HCPCS or CPT code for the ambulance provider and calculate the Medicare payment for those claims. The state will then calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

G. The supplemental payment will be made effective for emergency medical transportation provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall be made no less than every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter C. Air Transportation

§355. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical air transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. a provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170 and a provider of the corresponding Medical and Remedial Care and Services in the approved Medicaid State Plan.
4. Repealed.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers:

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider identified to receive supplemental payments, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under Paragraph E.2.

4. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under Paragraph E.2.

5. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under Paragraph E.3 from an amount equal to the

amount calculated for each of the emergency medical transportation and air ambulance services under Paragraph E.4.

6. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under Paragraph E.5.

7. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from Paragraph B.6.

8. The department will reimburse providers based on the following criteria.

a. For ambulance service providers identified in Paragraph E.1. located in large urban areas and owned by governmental entities, reimbursement will be up to 100 percent of the provider's average commercial rate calculated in Paragraph E.7.

b. For all other ambulance service providers identified in Paragraph E.1., reimbursement will be up to 80percent of the provider's average commercial rate calculated in Paragraph E.7.

9. - 17. Repealed.

F. Calculation of Average Commercial Rate. The supplemental payment will be determined in a manner to bring payments for these services up to the average commercial rate level.

1. For purposes of these provisions, the average commercial rate level is defined as the average amount payable by the commercial payers for the same services.

2. The state will align the paid Medicaid claims with the Medicare fees for each HCPCS or CPT code for the ambulance provider and calculate the Medicare payment for those claims. The state will then calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

G. The supplemental payment will be made effective for air ambulance services provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall not be made less often than every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Leave of Absence Days Reimbursement Reduction (LAC 50:II.20021)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20021 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1)et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing reimbursement to nursing facilities to reduce the reimbursement paid to nursing facilities for leave of absence days (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the reimbursement rates for leave of absence days (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to reduce the reimbursement rates for leave of absence days.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter200. Reimbursement Methodology

§20021. Leave of Absence Days

[Formerly LAC 50:VII.1321]

A. - E. ...

F. Effective for dates of service on or after July 1, 2013, the reimbursement paid for leave of absence days shall be 10 percent of the applicable per diem rate in addition to the provider fee amount.

1. The provider fee amount shall be excluded from the calculations when determining the leave of absence days payment amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities
Per Diem Rate Reduction
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the state fiscal year (SFY) 2012-13 nursing facility rate rebasing (*Louisiana Register*, Volume 39, Number 5).

For SFY 2013-14, state general funds are required to continue nursing facility rates at the rebased level. Because of the fiscal crisis facing the state, the state general funds will not be available to sustain the increased rates. Consequently, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the reimbursement rates for non-state nursing facilities (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for

nursing facilities to reduce the reimbursement rates for non-state nursing facilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20005. Rate Determination [Formerly LAC 50:VII.1305]

A. - I. ...

J. - N. Reserved.

O. ...

P. Effective for dates of service on or after July 1, 2013, the per diem rate paid to non-state nursing facilities, excluding the provider fee, shall be reduced by \$18.90 of the rate in effect on June 30, 2013 until such time that the rate is rebased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:092 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities
Reimbursement Methodology
Low Income and Needy Care Collaboration
(LAC 50:II.20025)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:II.20025 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum

period allowed under the Act or until adoption if the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to adopt provisions to establish a supplemental Medicaid payment for nursing facilities who enter into an agreement with a state or local governmental entity for the purpose of providing health care services to low income and needy patients (*Louisiana Register*, Volume 37, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation.

Effective October 27, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to establish a supplemental Medicaid payment to nursing facilities who participate in the Low Income and Needy Care Collaboration.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20025. Low Income and Needy Care Collaboration

A. Effective for dates of service on or after November 1, 2011, quarterly supplemental payments shall be issued to qualifying nursing facilities for services rendered during the quarter. Maximum aggregate payments to all qualifying nursing facilities shall not exceed the available upper payment limit per state fiscal year.

B. Qualifying Criteria. In order to qualify for the supplemental payment, the nursing facility must be affiliated with a state or local governmental entity through a Low Income and Needy Care Nursing Facility Collaboration Agreement.

1. A nursing facility is defined as a currently licensed and certified nursing facility which is owned or operated by a private entity or non-state governmental entity.

2. A Low Income and Needy Care Nursing Facility Collaboration Agreement is defined as an agreement between a nursing facility and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

C. Each qualifying nursing facility shall receive quarterly supplemental payments for nursing facility services. Quarterly payment distribution shall be limited to one-fourth of the aggregated difference between each qualifying nursing facility's Medicare rate and Medicaid payments the nursing facility receives for covered services provided to Medicaid recipients during a 12 consecutive month period. Medicare rates in effect for the dates of service included in the supplemental payment period will be used to establish the upper payment limit. Medicaid payments will be used for the same time period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#063

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Methodology
Private Room Conversions
(LAC 50:II.20010)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20010 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption if the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to allow for additional payments for private room conversions when a Medicaid participating nursing facility converts one or more semi-private rooms to private rooms for occupancy by Medicaid recipients (*Louisiana Register*, Volume 33, Number 8). Act 150 of the 2010 Regular Session of the Louisiana Legislature directed the department to increase the fair rental value minimum occupancy percentage from 70 percent to 85 percent. The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to ensure that the provisions governing private room conversions are consistent with the increase in the fair rental value minimum occupancy percentage which was adopted on July 1, 2011 (*Louisiana Register*, Volume 37, Number 10). This Emergency Rule is being promulgated to continue the provisions of the November 1, 2011 Emergency Rule. This action is being taken in order to avoid a budget deficit in the medical assistance programs.

Effective October 27, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20010. Additional Payments and Square Footage
Adjustments for Private Room Conversion
[Formerly LAC 50:VII.1310]

A. - D.2.c. ...

3. Resident days used in the fair rental value per diem calculation will be the greater of the annualized actual resident days from the base year cost report or 85 percent of the revised annual bed days available after the change in licensed beds.

D.4 - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1646 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#064

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities
Reimbursement Rate Reduction
After State Fiscal Year 2013
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by House Bill 1 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1)et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the 2011-2012 nursing facility rate rebasing (*Louisiana Register*; Volume 38, Number 5).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state nursing facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the July 1, 2012 Emergency Rule governing the SFY 2013 rate reduction to revise the reduction of the per diem rate (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 16, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20005. Rate Determination
[Formerly LAC 50:VII.1305]

A. - K. ...

L. Effective for dates of service on or after July 20, 2012, the average daily rates for non-state nursing facilities shall be reduced by 1.15 percent per day of the average daily rate on file as of July 19, 2012 after the sunset of the state fiscal year 2012 rebase and after the state fiscal year 2013 rebase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), amended LR 37:902 (March 2011), LR 37:1174 (April 2011), amended LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#066

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities
Reimbursement Rate Reduction
Before State Fiscal Year 2013
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by House Bill 1 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49: 953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the 2011-2012 nursing facility rate rebasing (*Louisiana Register*; Volume 38, Number 5).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 28, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20005. Rate Determination

[Formerly LAC 50:VII.1305]

A. - I. ...

J. Effective for dates of service on or after July 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$4.11 per day of the average daily rate on file as of June 30, 2012 after the sunset of the state fiscal year 2012 rebase and before the state fiscal year 2013 rebase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), amended LR 37:902 (March 2011), LR 37:1174 (April 2011), amended LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Public-Private Partnerships
South Louisiana Area
(LAC 50:V.6703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.6703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a

state owned and operated facility (Louisiana Register, Volume 39, Number 4). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient services provided by non-state owned hospitals participating in public-private partnerships to establish payments for hospitals located in the Lafayette and New Orleans areas (Louisiana Register, Volume 39, Number 7).

The department now proposes to amend the provisions of the June 24, 2013 Emergency Rule to remove the New Orleans Area hospital which was erroneously included in these provisions. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective October 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the June 24, 2013 Emergency Rule governing the reimbursement methodology for outpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 67. Public-Private Partnerships

§6703. Reimbursement Methodology

A. - B.5. Reserved.

C. Baton Rouge Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals shall enter into a cooperative endeavor agreement with a non-state owned and operated hospital to increase its provision of outpatient Medicaid hospital services by providing services that were previously delivered and terminated by the state-owned and operated facility in Baton Rouge.

2. A quarterly supplemental payment may be made to this qualifying hospital for outpatient services based on dates of service on or after April 15, 2013. Payments may be made quarterly based on the annual upper payment limit calculation per state fiscal year. Maximum payments shall not exceed the upper payment limit per 42 CFR 447.321.

D. Lafayette Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals shall enter into a cooperative endeavor agreement with a non-state owned and operated hospital to increase its provision of outpatient Medicaid hospital services by assuming the management and operation of services at a facility in Lafayette where such services were previously provided by a state owned and operated facility.

2. Effective for dates of service on or after June 24, 2013, a quarterly supplemental payment may be made to this qualifying hospital for outpatient services. Payments may be made quarterly based on the annual upper payment limit calculation per state fiscal year. Maximum payments shall not exceed the upper payment limit per 42 CFR 447.321.

E. - E.3. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#051

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Public-Private Partnerships
Supplemental Payments
(LAC 50:V.Chapter 67)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 67 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3). This Emergency Rule continues the provision of the March 2, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective October 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing supplemental Medicaid payments for outpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 67. Public-Private Partnerships

§6701. Qualifying Hospitals

A. Non-State Privately Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall provide supplemental Medicaid payments for outpatient hospital services rendered by non-state privately owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of outpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

B. Non-State Publicly Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for outpatient hospital services rendered by non-state publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of outpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

C. Non-State Free-Standing Psychiatric Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for outpatient psychiatric hospital services rendered by non-state privately or publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately or publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of outpatient Medicaid and uninsured psychiatric hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§6703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.321.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#067

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Pharmacy Benefits Management Program
Methods of Payment (LAC 50:XXIX.105 and Chapter 9)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.105 and Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage and reimbursement for prescription drugs to Medicaid-eligible recipients enrolled in the Medicaid Program. Act 10 of the 2009 Regular Session of the Louisiana Legislature provided that the department may redefine the reimbursement methodology for multiple source drugs in establishing the state maximum allowable cost (MAC) in order to control expenditures to the level of appropriations for the Medicaid Program. In accordance with the provisions of Act 10, the department promulgated an Emergency Rule to redefine the Louisiana maximum allowable cost (LMAC) (*Louisiana Register*, Volume 36, Number 1). In addition, the dispensing fee was increased for drugs with an LMAC.

The department subsequently determined that it was necessary to repeal the January 1, 2010 Emergency Rule in its entirety and amend the provisions governing the methods of payment for prescription drugs to redefine the LMAC (*Louisiana Register*, Volume 36, Number 2). The department promulgated an Emergency Rule to amend the February 1, 2010 Emergency Rule to revise the provisions governing the methods of payment for prescription drugs to further

redefine the LMAC and increase the dispensing fee (*Louisiana Register*, Volume 36, Number 3). The department determined that it was necessary to repeal the March 1, 2010 Emergency Rule in its entirety and promulgated an Emergency Rule to amend the provisions governing the methods of payment for prescription drugs to revise the LMAC provisions (*Louisiana Register*, Volume 36, Number 3). The department subsequently promulgated an Emergency Rule to repeal the March 20, 2010 Emergency Rule in its entirety in order to revise the provisions governing the methods of payment for prescription drugs and the dispensing fee (*Louisiana Register*, Volume 38, Number 9).

The department promulgated an Emergency Rule which amended the provisions of the September 5, 2012 Emergency Rule to further revise the provisions governing the methods of payment for prescription drugs and the dispensing fee (*Louisiana Register*, Volume 38, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the methods of payment for prescription drugs covered under the Pharmacy Benefits Management Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§105. Medicaid Pharmacy Benefits Management

System Point of Sale—Prospective Drug Utilization Program

A. - B. ...

C. Formulary Management. The formulary is managed through the use of federal upper limits (FUL). Federal upper limits provide for dispensing of multiple source drugs at established limitations unless the prescribing physician specifies that the brand product is medically necessary for a patient. Establishment of co-payments also provides for formulary management. The Medicaid Program has established a broad formulary with limited exceptions.

D. Reimbursement Management. The cost of pharmaceutical care is managed through estimated acquisition cost (EAC) of drug ingredient costs through average acquisition cost (AAC) or through wholesale acquisition cost (WAC) when no AAC is assigned; and compliance with federal upper limits regulations, and the establishment of the dispensing fee, drug rebates, and copayments.

E. - H. ...

I. POS/PRO-DUR Requirements Provider Participation

1. - 5. ...

6. Pharmacy providers and physicians may obtain assistance with clinical questions from the University of Louisiana at Monroe, School of Pharmacy.

I.7. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, Title XIX of the Social Security Act, and the 1995-96 General Appropriation Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1053 (June 2006), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Chapter 9. Methods of Payment

Subchapter A. General Provisions

§901. Definitions

Average Acquisition Cost (AAC)—the average of payments that pharmacists made to purchase a drug product, as determined through the collection and review of pharmacy invoices and other information deemed necessary by the Medicaid Program, and in accordance with applicable state and federal law.

Average Wholesale Price—Repealed.

* * *

Dispensing Fee—the fee paid by the Medicaid Program to reimburse for the professional services provided by a pharmacist when dispensing a prescription, including the provider fee assessed for each prescription filled in the state of Louisiana or shipped into the state of Louisiana per legislative mandate.

* * *

Single Source Drug—a drug mandated or sold by one manufacturer or labeler.

Usual and Customary Charge—a pharmacy's charge to the general public that reflects all advertised savings, discounts, special promotions, or other programs, including membership-based discounts initiated to reduce prices for product costs available to the general public, a special population, or an inclusive category of customers.

Wholesale Acquisition Cost (WAC)—the manufacturer's published catalog price for a drug product to wholesalers as reported to Medicaid by one or more national compendia on a weekly basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006), amended LR 34:87 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1558 (July 2010), LR 39:

Subchapter B. Dispensing Fee

§915. General Provisions

A. The dispensing fee shall be set by the department and reviewed periodically for reasonableness and, when deemed appropriate by the Medicaid Program, may be adjusted considering such factors as fee studies or surveys.

Adjustment Factors—Repealed.

a. - d. Repealed.

Base Rate—Repealed.

Base Rate Components—Repealed.

Table. Repealed.

a. - d. Repealed.

Maximum Allowable Overhead Cost—Repealed.

Overhead Year—Repealed.

B. Provider participation in the Louisiana dispensing fee survey shall be mandatory. Failure to cooperate in the Louisiana dispensing fee survey by a provider shall result in removal from participation as a provider of pharmacy services in the Medicaid Program. Any provider removed from participation shall not be allowed to re-enroll until a dispensing fee survey document is properly completed and submitted to the bureau.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1558 (July 2010), amended LR 39:

§917. Maximum Allowable Overhead Cost Calculation
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1559 (July 2010), repealed LR 39:

§919. Parameters and Limitations
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed LR 39:

§921. Interim Adjustment to Overhead Cost
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed LR 39:

§923. Cost Survey
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed LR 39:

§925. Dispensing Fee
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), repealed LR 39:

Subchapter C. Estimated Acquisition Cost

§935. Estimated Acquisition Cost Formula

A. Estimated acquisition cost (EAC) is the average acquisition cost of the drug dispensed adjusted by a multiplier of 1.1 for multiple source drugs and a multiplier of 1.01 for single-source drugs. If there is not an AAC available, the EAC is equal to the wholesale acquisition cost, as reported in the drug pricing compendia utilized by the department's fiscal intermediary. For department-defined specialty therapeutic classes, the EAC is the wholesale acquisition cost adjusted by a multiplier of 1.05.

B. - B.4.c. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), LR 39:

Subchapter D. Maximum Allowable Costs

§945. Reimbursement Methodology

A. Maximum Pharmaceutical Price Schedule

1. ...
2. Repealed.

B. Payment will be made for medications in accordance with the payment procedures for any eligible person who has identified himself to the provider by presenting his identification card which shows his eligibility. The department advises participating pharmacists regarding payable medication.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), LR 39:

§949. Cost Limits

A. - A.3.c. ...

B. The department shall make payments for single source drugs based on the lower of:

1. estimated acquisition cost (EAC) plus the dispensing fee; or

2. the provider's usual and customary charges to the general public not to exceed the department's maximum pharmaceutical price schedule. *General public* is defined here as all other non-Medicaid prescriptions including:

- a. third-party insurance;
- b. pharmacy benefit management; or
- c. cash.

3. Repealed.

C. The department shall make payments for multiple source drugs other than drugs subject to "physician certifications" based on the lower of:

1. estimated acquisition cost plus the dispensing fee;
2. federal upper limits plus the dispensing fee; or
3. the provider's usual and customary charges to the general public not to exceed the department's "maximum pharmaceutical price schedule." *General public* is defined here as all other non-Medicaid prescriptions including:

- a. third party insurance;
- b. pharmacy benefit management; or
- c. cash.

4. Repealed.

D. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended LR 39:

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended LR 39:

Subchapter E. 340B Program

§961. Definitions

* * *

Estimated Acquisition Cost (EAC)—the average acquisition cost of the drug dispensed adjusted by a multiplier of 1.1 for multiple source drugs and a multiplier

of 1.01 for single-source drugs. If there is not an AAC available, the EAC is equal to the wholesale acquisition cost, as reported in the drug pricing compendia utilized by the department's fiscal intermediary. For department-defined specialty therapeutic classes, the EAC is the wholesale acquisition cost adjusted by a multiplier of 1.05.

* * *

Wholesale Acquisition Cost (WAC)—the manufacturer's published catalog price for a drug product to wholesalers as reported to Medicaid by one or more national compendia on a weekly basis.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§963. Reimbursement

A. - B. ...

C. Dispensing Fees. The covered entity shall be paid a dispensing fee of \$10.51 for each prescription dispensed to a Medicaid patient. With respect to contract pharmacy arrangements in which the contract pharmacy also serves as the covered entity's billing agent, the contract pharmacy shall be paid the \$10.51 dispensing fee on behalf of the covered entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended LR 39:

Subchapter F. Antihemophilia Drugs

§971. Reimbursement

A. Anti-hemophilia drugs purchased by a covered entity through the 340B Program and dispensed to Medicaid recipients shall be billed to Medicaid at actual 340B acquisition cost plus 10 percent and the dispensing fee unless the covered entity has implemented the Medicaid carve-out option. If the covered entity has implemented the Medicaid carve-out option, such drugs shall be reimbursed at EAC plus the dispensing fee or the billed charges, whichever is less.

B. Anti-hemophilia drugs purchased by a non-340B covered entity shall be reimbursed at EAC plus the dispensing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O.

Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#068

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Benefits Management Program
State Supplemental Rebate Agreement Program
(LAC 50:XXIX.Chapter 11)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXIX.Chapter 11 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid coverage of prescription drugs through its Pharmacy Benefits Management Program. The department now proposes to amend the provisions governing the Pharmacy Benefits Management Program in order to establish provisions for the Medicaid Program's participation in The Optimal PDL Solution (TOP\$) State Supplemental Rebate Agreement Program which is a multi-state Medicaid state supplemental drug rebate pooling initiative. This program allows states to leverage their pharmaceutical purchasing power as a group to achieve more supplemental rebates than could be achieved independently. It is anticipated that this program will lower the net cost of brand drugs and the overall dollars spent on pharmacy benefits. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$37,484,235 for state fiscal year 2013-2014.

Effective October 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Medicaid coverage of prescription drugs to establish provisions for participation in TOP\$ State Supplemental Rebate Agreement Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 11. State Supplemental Rebate Agreement Program

§1101. General Provisions

A. Effective October 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing hereby establishes provisions for participation in The Optimal PDL Solution (TOP\$) State Supplemental Rebate Agreement (SRA) Program. TOP\$ is a multi-state Medicaid state supplemental drug rebate pooling initiative approved by the

U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services and administered by Provider Synergies, L.L.C/Magellan Medicaid Administration. The purpose of this program is to allow states the opportunity to leverage their pharmaceutical purchasing power as a group to achieve more supplemental rebates and discounts from prescription drug companies than could be achieved independently.

B. Pursuant to R.S. 46:153.3, the department shall enter into a contractual agreement with Provider Synergies to participate in TOP\$. Provider Synergies/Magellan Medicaid Administration will act on the department's behalf to provide the necessary administration services relative to this agreement for the provision of state supplemental drug rebate contracting and preferred drug list administration services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#014

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program Public-Private Partnerships Professional Practitioners Supplemental Payments (LAC 50:IX.15157)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts §15157 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for the Professional Services Program to provide supplemental payments to physicians and other eligible professional service practitioners affiliated with the Tulane University School of Medicine in New Orleans (*Louisiana Register*, Volume 38, Number 8).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Professional Services Program to provide a supplemental payment to physicians and other professional service practitioners employed by a physician group affiliated with certain non-state owned hospitals participating in public-private partnerships (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging continued provider participation in the Medicaid Program and ensuring recipient access to hospital services.

Effective October 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for services rendered by physicians and other professional service practitioners.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter F. Supplemental Payments

§15157. Qualifying Criteria—Public-Private Partnerships Physician Payments

A. Effective for dates of service on or after July 1, 2013, physicians and other professional service practitioners employed by a physician group affiliated with a non-state owned and operated hospital and providing services as a result of a public-private partnership with Louisiana State University, may qualify for supplemental payments for services rendered to Medicaid recipients.

B. To qualify for the supplemental payment, the physician or professional service practitioner must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. identified by Louisiana State University as a physician or other professional service practitioner that is employed by, or under contract to provide services through a public-private partnership at one of the former state-owned or operated hospitals that has terminated or reduced services.

C. The following professional services practitioners shall qualify to receive supplemental payments:

1. physicians;
2. physician assistants;
3. certified registered nurse practitioners; and
4. certified registered nurse anesthetists.

D. The supplemental payment shall be calculated in a manner that will bring payments for these services up to the community rate level.

1. For purposes of these provisions, the community rate shall be defined as the rates paid by commercial payers for the same service.

E. The private physician group shall periodically furnish satisfactory data for calculating the community rate as requested by the department.

F. The supplemental payment amount shall be determined by establishing a Medicare to community rate conversion factor for the private physician group. At the end of each quarter, for each Medicaid claim paid during the

quarter, a Medicare payment amount will be calculated and the Medicare to community rate conversion factor will be applied to the result. Medicaid payments made for the claims paid during the quarter will then be subtracted from this amount to establish the supplemental payment amount for that quarter.

G. The supplemental payments shall be made on a quarterly basis and the Medicare to community rate conversion factor shall be recalculated at least every three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1310#069

DECLARATION OF EMERGENCY

Department of Health and Hospitals Licensed Professional Counselors Board of Examiners

Disclosure or Transfer of Client Records
(LAC 46:LX.2105)

The Louisiana Department of Health and Hospitals, Louisiana Professional Counselors Board of Examiners has exercised the emergency provisions of the Administrative Procedures Act, specifically R.S. 49:953(B), to adopt rules relative to the disclosure or transfer of client records to revise Section 2105 of the board rules. This Emergency Rule

is effective October 20, 2013 for a period of 120 days. This action is necessary to ensure licensed professional counselors disclose or transfer client records in accordance with state law. The Licensed Professional Counselors Board of Examiners is in the process of developing the permanent Rule associated with Act 173 of the 2013 Regular Legislative Session and will revise Section 2105 as part of this Larger rule change.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LX. Licensed Professional Counselors Board of Examiners

Subpart 1. Licensed Professional Counselors

Chapter 21. Code of Conduct for Licensed Professional Counselors

§2105. Confidentiality, Privileged Communication, and Privacy

A. - A.6.e. ...

f. Disclosure or Transfer. Unless exceptions to confidentiality exist, counselors obtain written permission from clients to disclose or transfer records to legitimate third parties. Steps are taken to ensure that receivers of counseling records are sensitive to their confidential nature.

6.g. - 8.c. ...

B. Effect on Existing Rules. All existing rules or parts thereof are hereby superseded and amended to the extent that they specifically conflict with these emergency rules. Existing board rules shall be revised and re-codified at such time as the final board rules implementing Act 173 are adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:623 (August 1989), amended LR 24:440 (March 1998), LR 29:144 (February 2003), LR 39:1796 (July 2013), LR 39:

Mary Alice Olsan
Executive Director

1310#031

Rules

RULE

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Agricultural Chemistry and Seed Commission

Seeds (LAC 7:XIII.Chapters 1-11)

Editor's Note: Part XIII of Title 7 is being recodified and is printed below for future reference.

The Agricultural Chemistry and Seed Commission, the successor to the Seed Commission by Act 26 of 2013, is repromulgating the rules and regulations of the Seed Commission to bring the rules and regulations under the jurisdiction of the Agricultural Chemistry and Seed Commission, to maintain them in full force and effect, simplify the format to make it easier for persons interested in the rules and regulations to find provisions pertinent to their interests, and to provide appropriate space for the numbering of future rules and regulations in accordance with the format utilized by the Office of the State Register. No change in the wording of any rule or regulations is being made by this repromulgation except to change the numbering of any section referenced in any other section to coincide with the new number given to the referenced section.

To aid in the transition two tables are provided below. Table 1 lists the old section numbers of Part XIII and the new section numbers opposite the old numbers. Table 2 shows the new sections numbers and then the old section numbers opposite the new numbers. These tables are provided as a convenience and do not constitute a new part of these rules and regulations. As an added convenience the old section number is provided in the heading of each section.

Disposition Table	
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§161	§703
§163	§705
§165	§741
§167	§711
§169	§713
§171	§715
§173	§743
§175	§745
§177	§747
§179	§781
§181	§783
§183	§717
§185	§749
§187	§751
§189	§753
§191	§755
§193	§719
§195	§757
§197	§785
§199	§787
§201	§759
§203	§761
§205	§789
§207	§763
§209	§765
§211	§721
§213	§791
§215	§811
§217	§793
§219	§723
§221	§725
§223	§901
§225	§903
§227	§905
§229	§907
§231	§909
§233	§911
§235	§913
§237	§107
§239	§103
§241	§105
Chapter 3	Chapter 11
§301	§1101
§303	§1103
§305	§1105
§307	§1107
§309	§1109
§311	§1111
New Section Numbers	Former Section Numbers
§101	§101
§103	§239
§105	§241
§107	§237
§109	§109
§111 - §119	None (Reserved by Repromulgation)

Disposition Table	
§121	§113
§123	§115
§125	§143
§127 - §129	None (Reserved by Repromulgation)
§131	§121
§133	§111
§135	§119
§137	§103
§139	§105
§141	§107
§143	§117
§145	§145
§301	§151
§303	§153
§501	§125
§503	§123
§505	§127
§507	§129
§509	§131
§511	§133
§513	§135
§515	§137
§517	§139
§519	§141
§521	§147
§523	§149
§701	§159
§703	§161
§705	§163
§707	§155
§709	§157
§711	§167
§713	§169
§715	§171
§717	§183
§719	§193
§721	§211
§723	§219
§725	§221
§727-§739	None (Reserved by Repromulgation)
§741	§165
§743	§173
§745	§175
§747	§177
§749	§185
§751	§187
§753	§189
§755	§191
§757	§185
§759	§201
§761	§203
§763	§207
§765	§209
§767 - §779	None (Reserved by Repromulgation)
§781	§179
§783	§181
§785	§197
§787	§199
§789	§205
§791	§213
§793	§217
§795 - §809	None (Reserved by Repromulgation)
§811	§215
§901	§223
§903	§225
§905	§227
§907	§229

Disposition Table	
§909	§231
§911	§233
§913	§235
§1101	§301
§1103	§303
§1105	§305
§1107	§307
§1109	§309
§1111	§311
§1113- §1119	None (Reserved by Repromulgation)

**Title 7
AGRICULTURE AND ANIMALS
Part XIII. Seeds**

**Chapter 1. General Provisions
Subchapter A. Definitions; Administrative Matters**

**§101. Definitions
(Formerly §101)**

A. The following terms are defined in addition to those in the Act.

Coated Seed—any seed unit covered with any substance that changes the size, shape, or weight of the original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, and pesticides that do not significantly change the size, shape, or weight of the original seed are excluded.

Declaration—a written statement of a grower, shipper, processor, dealer, or importer, given for any lot of seed the kind, variety, type, origin, or the use for which the seed is intended.

Hybrid Seed Corn [as applied to field corn, sweet corn, or popcorn]—the first generation seed of a cross produced by controlling the pollination, and by combining two, three, or four inbred lines, or by combining one inbred or a single cross with an open pollinated variety. Hybrid designations shall be treated as variety names.

LAES—Louisiana Agricultural Experiment Station

LDAF—Louisiana Department of Agriculture and Forestry

Processing—cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and, therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, any of which would not require retesting to determine the quality of the seed.

Prohibited Noxious Weed Seed—the seeds of perennial weeds such as not only reproduce seed, but also spread underground roots or stems, and which, when established, are highly destructive and difficult to control in the state by ordinary good cultural practices.

Registered Seed Technologist—as applied in these regulations, means a seed technologist who has attained registered membership in the Society of Commercial Seed Technologists (society) through qualifying tests and experiences as required by the society.

Restricted Noxious Weed Seed—seeds of such weeds as are very objectionable in fields, lawns or gardens of this state, but can be controlled by good cultural practices.

Seed Gathered in Elevators—seed gathered in elevators or other establishments to be sold for planting purposes by

farmers or others that are subject to the provisions of the law.

Treated—given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:104 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 36:1220 (June 2010), LR 37:270 (January 2011), LR 39:1757 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2702 (October 2013).

§103. Request for Adoption, Amendment, or Repeal of a Rule (Formerly §239)

A. Any interested person may, pursuant to R.S. 49:953(C), request the commission to adopt, amend, or repeal a rule (rule change) that the commission has the authority to make.

B. A request for a rule change shall be in writing and shall contain the following information:

1. a draft of the proposed wording of the requested rule change or a statement detailing the content of the requested rule change;

2. the name, address, telephone number, fax number and e-mail address of the requesting party.

C. The request for a rule change shall be addressed to the commission and shall be mailed or delivered to 5825 Florida Boulevard, Baton Rouge, LA 70806.

D. The commission shall consider the request as follows:

1. a request for rule change shall be considered by the commission within a reasonable time, not to exceed 90 days:

a. notice of the meeting at which the request is to be considered shall be provided to the person submitting the request;

b. failure of the requesting party to attend the meeting for purposes of discussing the proposed rule change may be cause for the request to be denied by the commission;

c. the request, with the consent of the requesting party, may be taken under consideration or action deferred pending further information. If the matter is taken under consideration or action is deferred then it will be taken up again at the next regularly scheduled meeting of the commission or at a special meeting.

E. Any decision by the commission shall be in writing and shall state the reasons for the denial or action. Such notice may be delivered by hand, mail, electronically or by any other means reasonably assured to provide notice to the requesting party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 39:2703 (October 2013).1763 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences,

Agricultural Chemistry and Seed Commission, LR 39:2703 (October 2013).

§105. Procedure for Declaratory Orders and Rulings (Formerly §241)

A. This rule provides for the filing and prompt disposition of requests for declaratory orders and rulings as to the applicability of any statutory provision or as to the applicability of any rule or order of the commission, as required by R.S. 49:962 and 49:963(D).

B. A request for a declaratory order or ruling shall be in writing and shall contain the following information:

1. a citation to the specific statutory provision, rule or order that will be the subject of the declaratory order or ruling;

2. a concise statement of why the declaratory order or ruling is being requested;

3. a list of all persons that the requesting party may call to testify and a list of all documents that may be submitted as evidence, if a hearing is called to take evidence;

4. the name, address, telephone number, fax number and e-mail address of the requesting party, either printed or written in legible form.

C. The request for a declaratory order or ruling shall be addressed to the commission and shall be mailed or delivered to 5825 Florida Boulevard, Baton Rouge, LA 70806.

D. The commission shall consider the request as follows.

1. The request shall be considered by the commission within a reasonable time, not to exceed 90 days.

2. Notice of the meeting at which the request is to be considered shall be provided to the person submitting the request.

E. The commission's decision shall be sent to the requesting party either by certified mail, return receipt requested; hand delivery; or commercial courier.

F. Failure of the requesting party, after notice, to attend any hearing or meeting regarding the request may be cause for the request to be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433, R.S. 49:962 and R.S. 49:963(D).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 39:2703 (October 2013).1763 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2703 (October 2013).

§107. Repeal of Prior Rules and Regulations of the Seed Commission (Formerly §237)

A. Upon promulgation of these rules and regulations, all rules and regulations previously adopted and/or promulgated by the seed commission are hereby repealed in their entirety.

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

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2703 (October 2013).

§109. List and Limitations of Noxious Weed Seed (Formerly §109)

A. List and Limitations of Noxious Seed

List and Limitations of Noxious Seed	
Name	Limitations
1. Tropical Soda Apple (<i>Solanum viarum</i>)	Prohibited
2. Field Bindweed (<i>Convolvulus arvensis</i>)	Prohibited
3. Hedge Bindweed (<i>Convolvulus sepium</i>)	Prohibited
4. Nutgrass (<i>Cyperus esculentus</i> , <i>C. rotundus</i>)	Prohibited
5. Itchgrass (<i>Rottboellia exaltata</i> , <i>L.</i> , <i>R. cochinchinensis</i>)	Prohibited
6. Balloon Vine (<i>Cardiospermum halicacabum</i>)	Prohibited
7. Cocklebur (<i>Xanthium</i> spp.)	5 per lb.
8. Spearhead (<i>Rhynchospora</i> spp.)	5 per lb.
9. Purple Moonflower (<i>Ipomoea turbinata</i>)	9 per lb.
10. Red Rice (<i>Oryza sativa</i> var.)	9 per lb.
11. Wild Onion and/or Wild Garlic (<i>Allium</i> spp.)	9 per lb.
12. Canada Thistle (<i>Cirsium arvense</i>)	100 per lb.
13. Dodder (<i>Cuscuta</i> spp.)	100 per lb.
14. Johnsongrass (<i>Sorghum halepense</i>)	100 per lb.
15. Quackgrass (<i>Agropyron repens</i>)	100 per lb.
16. Russian Knapweed (<i>Centaurea repens</i>)	100 per lb.
17. Blueweed, Texas (<i>Helianthus ciliaris</i>)	200 per lb.
18. Grass, Bermuda (<i>Cynodon dactylon</i>)	300 per lb.
19. Bracted Plantain (<i>Plantago aristata</i>)	300 per lb.
20. Buckhorn Plantain (<i>Plantago lanceolata</i>)	300 per lb.
21. Cheat (<i>Bromus secalinus</i>)	300 per lb.
22. Hairy Chess (<i>Bromus commutatus</i>)	300 per lb.
23. Corncockle (<i>Agrostemma githago</i>)	300 per lb.
24. Darnel (<i>Lolium temulentum</i>)	300 per lb.
25. Dock (<i>Rumex</i> spp.)	300 per lb.
26. Horsenettle (<i>Solanum carolinense</i>)	300 per lb.
27. Purple Nightshade (<i>Solanum elaeagnifolium</i>)	300 per lb.
28. Sheep Sorrel (<i>Rumex acetosella</i>)	300 per lb.
29. Morning Glory (<i>Ipomoea</i> spp.)	18 per lb.
30. Wild Poinsettia (<i>Euphorbia heterophylla</i> , <i>E. dentata</i>)	18 per lb.
31. Wild Mustard and Wild Turnips (<i>Brassica</i> spp.)	300 per lb.
32. Hemp Sesbania, Coffeebean, Tall Indigo (<i>Sesbania exaltata</i>)	300 per lb.
33. Curly Indigo (<i>Aeschynomene virginica</i>)	300 per lb.
34. Mexican Weed (<i>Caperonia castaneaefolia</i>)	300 per lb.
Sum of Total Noxious Weed (Subject to limitations above)	500 per lb.

B. Limitations on noxious and prohibited weeds are listed on individual certified crop seed regulations. Noxious weed seed tolerance of one for regulatory action on certified seed being offered for sale in Louisiana for those noxious weed seed which are prohibited by the Louisiana Certified Seed Regulations for the specific seed kind in question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 5:96 (May 1979), LR 7:285 (June 1981), LR 8:563 (November 1982), LR 9:197, 206 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:605 (September 1988), LR 23:1282 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Seed Commission, LR 30:199 (February 2004), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2704 (October 2013).

§111 - §119. Reserved

Subchapter B. Fees

§121. License Fee; Laboratory and Sampling Fees (Formerly §113)

A. The annual fee for a seed dealer's license shall be \$100.

B. The following laboratory and sampling fees shall be applicable to all seed testing conducted by this department:

1. standard germination test only, purity test only or noxious weed examination only: \$10 each (except grasses and seed containing high inert: \$20 each);
2. complete test (purity and germination): \$17.50 each (except grasses and seed containing higher inert: \$30 each);
3. accelerated aging: \$15 each;
4. Texas cool test: \$20 each;
5. tetrazolium: \$20 each;
6. examination of 4-pound rice seed sample for presence of red rice: \$10;
7. varietal purity \$12;
8. herbicide bioassay: \$25;
9. seed mixtures:
 - a. purity only: \$10 for first two components; \$5 for each additional component;
 - b. germination only: \$10 for first two components; \$5 for each additional component;
 - c. complete test (purity, germination, noxious weed exam): \$10 per component;
10. seed count per pound: \$5;
11. service sample taken by departmental inspector: \$15 per sample; and
12. priority sample: \$25.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 7:164 (April 1981), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:603 (September 1988), LR 29:2632 (December 2003), LR 36:1220 (June 2010), LR 37:1373 (May 2011), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2704 (October 2013).

§123. Inspection Fee on Agricultural Seed (Formerly §115)

A. In addition to the requirements of the Act, any person who sells, distributes, or offers or handles for sale agricultural and vegetable seed within this state for planting purposes shall pay an inspection fee thereon in accordance with the following.

1. All seed dealers shall pay an inspection fee of \$0.20 for each 100 pounds of agricultural and vegetable seed sold, offered for sale, exposed for sale, or otherwise distributed for sale for planting purposes within this state. The inspection fee shall be due on the total pounds of first point of sales distributions in Louisiana by the seller of the seed.

Exception: The payment of an inspection fee is not required for a person who offers for sale, sells, or distributes Louisiana certified tagged seed upon which inspection fees have already been paid.

2. Records must be kept by the seed dealer showing the total pounds of each lot identified as to the kind and

variety (when applicable). In addition, for auditing purposes, records must be kept by the seed dealer showing the invoice number for each distribution of seed, identified with the name of the kind and variety (when applicable), the lot number, pounds of seed, and number of containers of seed, and the person, to whom the seed was distributed.

3. Each seed dealer shall file with the department a quarterly report (supplied by the department) covering the following periods: 1st quarter—July, August, September; 2nd quarter—October, November, December; 3rd quarter—January, February, March; 4th quarter—April, May, June. Reports and fees shall be filed with the department no later than 30 days following the end of each quarter. The department may assess a 10 percent additional charge for late reports. If a seed dealer has no sales during the quarterly reporting period the department must be notified accordingly.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Seed Commission, LR 14:603 (September 1988), amended LR 29:2632 (December 2003), LR 38:1558 (July 2012), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2704 (October 2013).

§125. Fees

(Formerly §143)

A. All fees shall be paid before the requested work is performed, as follows.

1. All application fees and fees for inspections, re-inspections, sampling and re-sampling shall be paid at the time the application or request for work is submitted to the department, except for those crop kinds where the fee is based on an hourly rate and mileage.

2. Fees for certification of seeds by laboratory analysis shall be paid prior to submission of the certified sample to the State Seed Testing Laboratory.

3. Requests for different payment arrangements shall be made to and must be approved by the director or assistant director.

B. Application Fees

1. The application fee for certification for each producer shall be \$28 for each variety with only one variety per application if the application is timely submitted.

2. The application fee for certification shall be \$100 for each application submitted after the deadline shown in §509 of this Part.

C. Field inspection fees shall be charged as follows:

1. all crop, grass, and other seeds not listed in this Section □ \$1.15 per acre;

2. for the following species, California Bulrush, Sea Oats, and Smooth Cordgrass:

a. an hourly fee of \$25 per hour, per inspector shall be charged for each inspection of native plants; and

b. mileage for travel to and from inspection location shall be charged at the mileage reimbursement rate established by the Division of Administration's state travel regulations;

3. rice—\$1.15 per acre;

4. small grains—\$1.15 per acre;

5. sugarcane—\$3 per acre;

6. sweet potato:

a. field inspection—\$2.25 per acre;

b. greenhouse and seedbed inspections—\$62.50 per crop year;

c. seed storage inspection:

i. a fee of \$25 per hour, per inspector shall be charged for each seed sweet potato storage inspection; and

ii. mileage for travel to and from the inspection location shall be charged at the rate set by the Division of Administration for state employees pursuant to R.S. 39:231;

7. turf and pasture grass—\$31.25 per acre.

D. Reinspection fees—\$50 for each re-inspection.

E. Fees for phytosanitary inspections—\$1.15 per acre.

F. Fees for resampling certified seed—\$30 for each re-sample.

G. Fees for bulk sampling—\$30 for each bulk sample by vacuum probe.

H. Seed Certification Fees

1. Fees for certified seed shall be 16 cents per weight unit and be calculated on the total weight units in the certifiable lot. The number of weight units for a particular lot of seed shall be reported when the certified sample is taken.

a. The weight unit for all seeds is 50 pounds except for rice which has a weight unit of 100 pounds

b. A person who sells, distributes, or offers for sale certified seed in Louisiana and who has paid certification fees for a particular lot of seed may request a partial refund, not to exceed seventy-percent on the unsold portion of the certified lot.

c. A person requesting a refund must submit a written request, along with all unused tags from the certified lot, within nine months of the certified test date, stating:

i. the lot number for the seed that the request is being made;

ii. the number of weight units sold from the certified lot; and

iii. the number of weight units partitioned for refund from the certified lot.

d. A request for a refund shall be approved upon verification of the unused tags and information submitted with the request.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 10:495 (July, 1984); amended by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), LR 14:604 (September 1988), LR 16:847 (October 1990), LR 25:1617 (September 1999), LR 26:235 (February 2000), LR 29:2632 (December 2003), LR 31:420 (February 2005), LR 31:1511 (July 2005), LR 34:2339 (November 2008), LR 37:2979 (October 2011), LR 38:1558 (July 2012), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2705 (October 2013).

§127 - §129. Reserved

Subchapter C. Labels; Records; Samples; Tolerances; Standards; Noxious Weed Seed

§131. Labeling of Seed (Formerly §121)

A. Every person whose name appears on the label of seed, except persons exempt pursuant to the authority of R.S. 3:1445, who sells, transports, distributes, or offers for sale agricultural, vegetable, or flower seeds or other propagating stock in Louisiana for planting purposes shall

have a complete analysis test performed on the seed by a registered seed technologist or an official state seed analyst prior to the seed being sold, distributed or offered for sale in Louisiana.

B. Information required to be shown on the label:

1. a word or statement in type no smaller than eight points indicating that the seed has been treated;

2. the commonly accepted coined, chemical (generic) or abbreviated chemical name or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight points;

3. a caution statement if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals;

a. seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a statement such as "poison," "poison treated" or "treated with poison." The word "poison" shall be in type no smaller than eight points and shall be in red letters on a distinctly contrasting background. In addition, the label shall show a representation of a skull and crossbones at least twice the size of the type used for the name of the substance and the statement indicating that the seed has been treated;

b. seed treated with other harmful substances (other than mercurials or similarly toxic substances). If the amount remaining with the seed is harmful to humans or other vertebrate animals, it shall be labeled to show a caution statement, in type no smaller than eight points, such as "Do not use for food, feed or oil," except:

i. seed treated with substances other than mercurials or similarly toxic substances and in containers of four ounces or less need not be labeled to show caution statement; and

ii. the following substances shall not be deemed harmful if present at a rate less than the number of parts per million (ppm) indicated:

(a). Allethrin, 2ppm;

(b). Malathion, 8ppm;

(c). Methoxychlor, 2ppm: Piperonyl butoxide, 8ppm on oat and sorghum and 20ppm on all other seeds; and

(d). Pyrethrins, 1ppm on oat and sorghum and 3ppm on all other seeds.

C. It shall be unlawful for any person to sell or offer for sale within the state any seed labeled "foundation seed," "registered seed" or "certified seed," unless it has been produced and labeled in compliance with the rules and regulations of a seed certifying agency approved by the commissioner.

D. When more than one component is required to be named on the label, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

E. The label on hybrid corn shall show the state where grown.

F. Abbreviation of Names. The name and kind of variety of seed shall not be abbreviated, but shall be written out in full.

G. Trucks and other carriers transporting seed for delivery or sale, or to be sold or delivered to consumers in this state, on the public highways, or at public auctions shall have available for examination at any time a bill of lading, waybill or a delivery receipt showing:

1. the name of the shipper or party from whom purchased;

2. the name and address of the party to whom the seed is to be delivered;

3. the kind and amount of each separate lot of seed; and

4. the name of the truck line or owner and driver of the truck or other carrier making delivery or transporting the seed.

H. No seed shall be sold or offered for sale from any bag or container bearing a germination label more than nine months prior to the time such seed is offered for sale. For all vegetable seed packaged in hermetically sealed containers, this period shall be extended to 24 months. The owner shall be responsible for the relabeling after expiration of the germination test date period. Under the provisions of this regulation, any person, firm or corporation possessing a seedsman's permit shall have the right to label such seed after it has been retested, stating the true germination thereof. A new tag or label shall be used to bring the germination up-to-date. The original tag shall not be changed in any way.

I. After December 31, 2011 each package of coated seed shall have the following additional information on the front of the package which shall be set forth in a clear and conspicuous manner so that the ultimate purchaser is able to read the information easily and without strain:

1. the words "coated seed;"

2. a statement giving the maximum amount of coating material contained within the package;

3. a statement referring purchaser to the product label for additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and 3:1436.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 16:492 (June 1990), LR 37:270 (January 2011), LR 37:2979 (October 2011), LR 39:2705 (October 2013).1757 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2705 (October 2013).

§133. Tag Requirements

(Formerly §111)

A. analysis tag shall be a Number 6 standard shipping tag, minimum size, and shall carry the information required by the Louisiana Seed Law, arranged as follows:

Kind and Variety _____

Where Grown _____ Net Wt. _____ Lot No. _____

Pure Seed _____ Percent Germination _____ Percent

Inert Matter _____ Percent Hard Seed _____ Percent

Crop Seed _____ Percent Total Germ and Hard Seed _____ Percent

Weed Seed _____ Percent Date of Test _____

Name and No. of Noxious Weed Seed per lb. _____

Name _____

Address _____

B. Tags for certified seed, foundation seed or registered seed shall be adopted by the certifying agency, approved by the commissioner and meet the requirements of the Louisiana Seed Law.

C. All information required on the seed analysis tag or label shall be placed on one side of the tag or label without intervening matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1436 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2706 (October 2013).

§135. Invoices and Records (Formerly §119)

A. Each person handling agricultural seed subject to this Act shall keep for a period of three years complete records of each lot of agricultural seed handled. When there is evidence of a violation of this Act, invoices, records of purchases and sales, and any other records pertaining to the lot or lots involved shall be accessible for inspection by the commissioner or his authorized agent in connection with the administration of this Act at any time during customary business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1435 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2707 (October 2013).

§137. Sampling (Formerly §103)

A. The manner of sampling and handling seed in the field and analyzing and testing seed in the laboratory, greenhouse and trial plots shall be the same as that recommended in the latest rules for testing seed adopted by the Association of Official Seed Analysts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1434 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:104 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2707 (October 2013).

§139. Tolerances (Formerly §105)

A. Except as otherwise provided in this Section, the tolerances published in the latest rules and regulations for testing seed by the Association of Official Seed Analysts shall be applicable in the administration of the Louisiana Seed Law.

B. Germination Tolerances. The following tolerances, which are recognized by the Federal Seed Act, 7 USC 1551-1611, are adopted and are applicable to the percentage of germination and also to the sum of the germination plus the

hard seed. Maximum tolerance values for comparing two 400-seed germination tests of the same or different submitted samples tested in the same or different laboratories.

Average Percent Germination		Tolerance*
A	B	C
99	2	2
97 - 98	3 - 4	3
94 - 96	5 - 7	4
91 - 93	8 - 10	5
87 - 90	11 - 14	6
82 - 86	15 - 19	7
76 - 81	20 - 25	8
70 - 75	26 - 31	9
60 - 69	32 - 41	10
51 - 59	42 - 50	11

*When only 200 seeds of mixtures are tested, 2 percent shall be added to the above germination tolerances.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:104 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 33:1609 (August 2007), LR 34:2338 (November 2008), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2707 (October 2013).

§141. Germination Standards for Vegetable Seed (Formerly §107)

A. Germination standards for vegetable seed shall be the same as those published under *United States Department of Agriculture Service and Regulatory Announcements Number 156* and subsequent amendments. Minimum germination of vegetable or garden seed shall be as follows.

	Percent
Artichoke	60
Asparagus (including hard seed)	70
Beans (except lima)	75
Beans (lima)	70
Beets	65
Broccoli	75
Brussels sprouts	70
Cabbage	75
Cardoon	60
Carrot	55
Cauliflower	75
Celery or celeriac	55
Chicory	65
Citron	65
Collards	80
Corn	75
Cress, garden	40
Cucumber	80
Dandelion	45
Eggplant	60
Endive	70
Fetticus (cornsalad)	70
Kale	75
Kohlrabi	75
Leek	60
Lettuce	80
Muskmelon	75
Mustard	75
Mustard, spinach	75

	Percent
Mustard, vegetable	75
Okra (including hard seed)	50
Onion	70
Pak-choi	75
Parsley	60
Parsnip	60
Peas	80
Pepper	55
Pe-tsai or Chinese cabbage	75
Pumpkin	75
Radish	75
Rhubarb	60
Rutabaga	75
Salsify	75
Sorrel	60
Spinach (except New Zealand)	60
Spinach, New Zealand	40
Squash	75
Swiss chard	65
Tomato	65
Tomato, husk	50
Turnip	80
Watermelon	70
Watercress	35

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:104 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2707 (October 2013).

§143. Standards for Agricultural Seed (Formerly §117)

A. No agricultural seed shall be offered for sale if the germination percentage, including hard seed, is below 60 percent, except Dallisgrass. Dallisgrass shall not be offered for sale if the pure live seed percentage (purity times germination) is below 10 percent.

B. No agricultural and vegetable seed shall be sold, offered for sale or exposed for sale containing in excess of 2 1/2 percent of total weed seed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1444 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2708 (October 2013).

§145. Noxious Weed Seed; List; Limitations (Formerly §145)

A. List and Limitations of Noxious Seed

List and Limitations of Noxious Seed	
Name	Limitations
1. Tropical Soda Apple (<i>Solanum viarum</i>)	Prohibited
2. Field Bindweed (<i>Convolvulus arvensis</i>)	Prohibited
3. Hedge Bindweed (<i>Convolvulus sepium</i>)	Prohibited
4. Nutgrass (<i>Cyperus esculentus</i> , <i>C. rotundus</i>)	Prohibited

List and Limitations of Noxious Seed	
Name	Limitations
5. Itchgrass (<i>Rottboellia exaltata</i> , L., <i>R. cochinchinensis</i>)	Prohibited
6. Balloon Vine (<i>Cardiospermum halicacabum</i>)	Prohibited
7. Cocklebur (<i>Xanthium</i> spp.)	5 per lb.
8. Spearhead (<i>Rhynchospora</i> spp.)	5 per lb.
9. Purple Moonflower (<i>Ipomoea turbinata</i>)	9 per lb.
10. Red Rice (<i>Oryza sativa</i> var.)	9 per lb.
11. Wild Onion and/or Wild Garlic (<i>Allium</i> spp.)	9 per lb.
12. Canada Thistle (<i>Cirsium arvense</i>)	100 per lb.
13. Dodder (<i>Cuscuta</i> spp.)	100 per lb.
14. Johnsongrass (<i>Sorghum halepense</i>)	100 per lb.
15. Quackgrass (<i>Agropyron repens</i>)	100 per lb.
16. Russian Knapweed (<i>Centaurea repens</i>)	100 per lb.
17. Blueweed, Texas (<i>Helianthus ciliaris</i>)	200 per lb.
18. Grass, Bermuda (<i>Cynodon dactylon</i>)	300 per lb.
19. Bracted Plantain (<i>Plantago aristata</i>)	300 per lb.
20. Buckhorn Plantain (<i>Plantago lanceolata</i>)	300 per lb.
21. Cheat (<i>Bromus secalinus</i>)	300 per lb.
22. Hairy Chess (<i>Bromus commutatus</i>)	300 per lb.
23. Corncockle (<i>Agrostemma githago</i>)	300 per lb.
24. Darnel (<i>Lolium temulentum</i>)	300 per lb.
25. Dock (<i>Rumex</i> spp.)	300 per lb.
26. Horsenettle (<i>Solanum carolinense</i>)	300 per lb.
27. Purple Nightshade (<i>Solanum elaeagnifolium</i>)	300 per lb.
28. Sheep Sorrel (<i>Rumex acetosella</i>)	300 per lb.
29. Morning Glory (<i>Ipomoea</i> spp.)	18 per lb.
30. Wild Poinsettia (<i>Euphorbia heterophylla</i> , <i>E. dentata</i>)	18 per lb.
31. Wild Mustard and Wild Turnips (<i>Brassica</i> spp.)	300 per lb.
32. Hemp Sesbania, Coffeebean, Tall Indigo (<i>Sesbania exaltata</i>)	300 per lb.
33. Curly Indigo (<i>Aeschynomene virginica</i>)	300 per lb.
34. Mexican Weed (<i>Caperonia castaneaefolia</i>)	300 per lb.
Sum of Total Noxious Weed (Subject to limitations above)	500 per lb.

B. Limitations on noxious and prohibited weeds are listed on individual certified crop seed regulations. Noxious weed seed tolerance of one for regulatory action on certified seed being offered for sale in Louisiana for those noxious weed seed which are prohibited by the Louisiana Certified Seed Regulations for the specific seed kind in question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 5:96 (May 1979), LR 7:285 (June 1981), LR 8:563 (November 1982), LR 9:197, 206 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:605 (September 1988), LR 23:1282 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Seed Commission, LR 30:199 (February 2004), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2708 (October 2013).

Chapter 3. Enforcement of Law and Regulations §301. Acts which Constitute Violations (Formerly §151)

A. Any of the following acts shall be considered as violations:

1. failure to comply with the requirements of the Seed Law (R.S. 3:1431-1447) or these rules and regulations;

2. any sale or offer for sale of any agricultural seeds that are not properly labeled in accordance with the rules and regulations of the seed commission;

3. any attempt to mislead or defraud by altering, erasing, destroying, forging, disfiguring, reusing, or substituting in any manner any labels, tags, tape, or certificates which pertain to quality, quantity, or condition of agricultural seeds. This prohibition applies for labels, tags, tape or certificates issued by any duly constituted seed certifying agency;

4. any damage or breaking of official seals on containers of certified seeds;

5. failure to keep accurate records and maintain lot identity;

6. adding any seed of any kind, whether certified or not, to any lot of certified seed (except as permitted under §513.D).

B. Each day on which any of the activities listed above occurs shall be considered a separate offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1444 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:567 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2708 (October 2013).

§303. Penalties; Adjudicatory Hearing Required (Formerly §153)

A. Whenever the chairman of the Seed Commission has reason to believe that there has been a violation of the Seed Law or any of these rules and regulations, he shall notify the person believed to have committed the violation, the notice to be in accordance with the requirements of the Administrative Procedure Act.

B. No penalty shall be imposed on any individual, firm, corporation or other legal entity regulated under the Seed Law until such time as an adjudicatory hearing is conducted, such hearing to be conducted in accordance with the requirements of the Administrative Procedure Act.

C. Whenever the Seed Commission determines that a violation has occurred, the Seed Commission may impose any of the following penalties:

1. withdraw from the offender the right to have seed certified under these procedures;

2. destroy any seed which is not in compliance with the requirements of the Seed Law or the requirements of these regulations; or

3. impose a penalty not to exceed \$500 for each offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1446 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:567 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Seed Commission LR 12:825 (December 1986), LR 29:2633 (December 2003), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2709 (October 2013).

Chapter 5. General Seed Certification Requirements

§501. Definitions

(Formerly §125)

Certification—the process by which official recognition is given to seeds produced under a limited generation system which ensures genetic purity and identity and a given minimum level of quality.

Clonally Propagated Plant—a plant that is duplicated or propagated as a plant clone from vegetative cuttings or plant divisions using one or more of an aerial stem, rhizome, stolon, leave, or root.

Germination—the percentage of seeds capable of producing normal seedlings under ordinarily favorable growing conditions.

Hybrid—one or more crosses of inbred lines of the same kind of seed.

Inbred Line—a relatively true-breeding strain resulting from at least five successive generations of controlled self-fertilization or of backcrossing to a recurrent parent with selection, or its equivalent for specific characteristics.

Inert Matter—all matter not seeds, including pieces of broken and damaged seeds one-half or less than the original size, sterile florets, fungus bodies, stones and all matter considered as inert by the Association of Official Seed Analysts Rules for Testing Seeds.

Inseparable Seeds—seeds that are similar in size, shape and weight to the seed offered for certification, which are difficult to remove.

Isolation—the distance required between a crop or variety entered for certification and other plantings of the same crop or variety, not entered for certification, which are pollinating at the same time.

Kind—one or more related species singly or collectively known by one common name (examples: corn, beans, wheat).

Land Requirement—the period of time during which a field entered for certification cannot have grown or been seeded to the same species or variety except a certified class of the same species or variety which was equal to or superior to that of the species or variety entered for certification. If a field(s) is(are) entered for certification in the foundation class, only the foundation class of seeds could have been grown in that field during the time period specified.

Lot of Seed—a definite quantity of seeds identified by a lot number or mark, every portion or bag of which is uniform, within permitted tolerances, relative to the factors which appear in the labeling.

Noxious Weeds—all weeds designated as noxious weeds under §145 of these regulations.

Off-Type (Mutations)—plants or seeds which deviate in one or more characteristics from the breeder description filed with the Department of Agriculture and Forestry.

Open-Pollination—pollination that occurs naturally as opposed to controlled pollination such as by detasseling cytoplasmic male sterility, self-incompatibility or similar processes.

Originator—a person, company, agent or institution developing a new variety of seed.

Other Weeds/Weed Seeds—all weeds and/or weed seeds which have not been designated as noxious weeds by the Seed Commission.

Plant Clone—a genetically identical plant or plant material derived originally from a single ancestor individual over one or more vegetative generations.

Recertification—the official approval of a second or subsequent generation of a certified class of seed.

Roguing—the removal from the field of noxious weeds, off-type plants, varietal mixtures and any other plants producing seeds which are inseparable from seeds of the crop to be certified.

Species—plants designated by a common name and having common characteristics.

Unit of Certification—any clearly defined field(s) or portion(s) of a field entered for certification.

Variety—a subdivision of a kind, characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated from other seeds of the same kind.

Volunteer Plants—plants of a crop kind or species other than the crop being certified that are present in a field.

Weight Unit—unit of measure, designated by the Louisiana Seed Commission, based on the most common industry accepted packaging weight in pounds for a specific commodity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and 3:1436.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:564 (November 1982), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 20:642 (June 1994), LR 31:420 (February 2005), LR 37:2979 (October 2011), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2709 (October 2013).

§503. Classes of Seed (Formerly §123)

Breeder Seed (White Tag)—seed directly controlled by the originating or sponsoring plant breeding institution, firm or individual which is the source for the production of seed of the certified classes.

Foundation Seed (White Tag)—progeny of breeder or foundation seed, handled so as to maintain specific genetic purity and identity, production of which must be acceptable to the Department of Agriculture and Forestry.

Registered Seed (Purple Tag)—progeny of breeder or foundation seed, handled under procedures acceptable to the Department of Agriculture and Forestry to maintain satisfactory genetic purity and identity.

Certified Seed (Blue Tag)—progeny of breeder, foundation or registered seed, handled under procedures acceptable to the Department of Agriculture and Forestry to maintain satisfactory genetic purity and identity.

Tree Seed—

1. *Certified Tree Seed (Blue Tag)*—seed from trees of proven genetic superiority, produced so as to assure genetic identity. Seeds from interspecific hybrids of forest trees may be included.

2. *Selected Tree Seed (Green Tag)*—progeny of rigidly selected trees or stands of untested parentage that have promise but not proof of genetic superiority and for which geographic source and elevation is stated on the label.

3. *Source-Identified Tree Seed (Yellow Tag)*—seed from:

a. natural stands with known geographic source and elevation, or plantations of known geographic origin and which is acceptable to the Department of Agriculture and Forestry.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:564 (November 1982), amended by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), LR 31:1510 (July 2005), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2710 (October 2013).

§505. General Requirements for Certification (Formerly §127)

A. The crop or variety to be certified must have been approved for certification by the Louisiana Department of Agriculture and Forestry. Also, the originator, developer, owner or agent shall provide the following to the Department of Agriculture and Forestry:

1. the name of the variety;
2. a statement concerning the variety's origin and the breeding procedure used in its development;
3. a detailed description of the morphological, physiological and other characteristics of the plants and seed that distinguish it from other varieties;
4. evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety;
5. a statement delineating the geographic area or areas of adaptation of the variety;
6. a statement on the plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;
7. a description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;
8. any additional restrictions on the variety specified by the breeder, with respect to geographic area of seed production, age of stand or other factors affecting genetic purity;
9. a sample of seed representative of the variety as marketed.

B. To be certified, all crops and/or varieties must conform to:

1. all general requirements for certification; and
2. all specific requirements for certification of a particular crop or variety. (See §§707-725 for specific requirements. In §§707-725, the percentages shown for pure seed and germination are the minimum acceptable levels of performance required for certification; the percentages shown for all other factors are maximum allowable percentages.)

C. The grower must submit the application described in §507 hereof on or before the date specified in §509 for the crop or variety to be certified. (See §507.B and §125.B for provisions concerning late applications.)

D. The crop or variety to be certified must be of breeder, foundation or registered seed, or seed approved by the seed commission.

E. The grower must maintain genetic purity during seeding, production, harvesting, storage, conditioning and labeling.

F. The grower must hand-rogue all off-type plants, varietal mixtures, noxious weeds or any other plants producing seed that are inseparable from seed of the crop or variety to be certified.

G. Other varieties or crops, volunteer plants and/or off-type plants cannot be present in the field, and seeds thereof cannot be present in seed to be certified, unless permitted under the specific certification standards for the crop or variety entered for certification. Noxious weeds are permitted in the field and seed thereof are permitted in seed to be certified, within the limitations specified in §145 hereof, unless a specific limitation on noxious weeds is contained in the specific requirements for the crop or variety entered for certification. (See §§707-725 for specific requirements.)

H. One or more field inspections will be made to determine genetic identity and purity. The crop or variety to be certified must be standing, reasonably free of weeds and of relatively uniform maturity at the time of field inspection(s). A copy of the field inspection report will be furnished to the grower.

I. All planting, harvesting, bin storage and cleaning equipment must be free of contamination by other seeds, insects, or plant diseases.

J. Storage facilities must be:

1. suitable for maintaining germination and varietal purity;
2. constructed so that a representative sample can be drawn; and
3. all such facilities are subject to approval by the Department of Agriculture and Forestry.

K. The grower must maintain complete records accounting for all production and final disposition of all certified seeds.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 20:642 (June 1994), LR 20:1257 (November 1994), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2710 (October 2013).

§507. Application for Field Certification (Formerly §129)

A. The grower must apply for certification on or before the application deadline shown in §509 for seed stock to be certified by the Department of Agriculture and Forestry. The grower must submit a completed application on the form provided by the department.

B. Applications for certification of seed stock for a crop or variety listed in §509 which are submitted after the deadline specified in §509 will not be approved unless field inspection(s) can be completed prior to harvest.

C. Information to accompany application:

1. name of variety;
2. GPS coordinates at or about the center point of each field presented for certification;

3. copy of the purchase invoice, or statement showing class of seed purchased;

4. one sample tag from each lot number (If the grower plants seed of his own production, the class of seed and lot number shall be identified by documentation acceptable to the Department of Agriculture and Forestry); and

5. a map of each field presented for certification.

D. It is the duty of the grower to notify the department at least two weeks prior to harvest of the anticipated harvest date for each field presented for certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 1434.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 34:863 (May 2008), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2711 (October 2013).

§509. Application Deadlines (Formerly §131)

- A. Onion bulbs and seed, and shallots—March 1.
- B. Tissue Culture Sugarcane—April 1.
- C. Clover (crimson, red, white), rescue grass, harding grass, vetch, and Irish potatoes—April 1.
- D. Oats, wheat, ryegrass, singletary peas—April 15.
- E. Watermelon—May 1.
- F. Sweet potatoes and sweet potato plants:
 1. greenhouse plantings (virus-tested)—45 days prior to planting;
 2. field plantings—June 1.
- G. Okra—June 15.
- H. Rice—July 1.
- I. Cotton, millet, sesame, sunflower, tree—July 15.
- J. Tomatoes (Spring)—June 1, (Fall)—July 15.
- K. Soybeans—August 1.
- L. Corn—a minimum of 30 days prior to pollination.
- M. Cowpeas—a minimum of 30 days prior to harvest.
- N. Grasses:
 1. Bermuda grasses:
 - a. new plantings—minimum of 30 days prior to harvest;
 - b. established stands (fields certified the previous year)—June 1. Renewal application must be submitted;
 2. turf and pasture grass:
 - a. new plantings—at least 15 days prior to land preparation for planting;
 - b. established stands (fields certified the previous year)—June 1. Renewal application must be submitted.
- O. Clonally propagated plant species, except for plant species for which a deadline is specifically provided in this Section:
 1. new plantings-submit application at least 15 days prior to land preparation for planting;
 2. established stands (fields certified the previous year)- submit renewal application by April 15.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:195 (April 1983), amended by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), LR 13:155 (March 1987), LR 13:232 (April 1987), LR

14:603 (September 1988), LR 23:1283 (October 1997), LR 25:1617 (September 1999), LR 34:863 (May 2008), LR 37:2979 (October 2011), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2711 (October 2013).

**§511. Limitations on Generations
(Formerly §133)**

A. The originator of the variety may specify the number of generations through which a variety may be multiplied.

B. No variety may be multiplied more than two generations beyond the foundation class, except as follows:

1. older varieties of certified seed may be recertified when foundation seed is not being maintained;

2. one additional generation of certified seed may be permitted on a one-year basis when, prior to planting season, the Seed Commission declares that there are insufficient supplies of foundation and registered seed to plant the needed acreage of the certified variety. Permission of the variety's originator, if existent, must be obtained. In this situation, the additional generation will not be eligible for recertification.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2712 (October 2013).

**§513. Lot of Seed
(Formerly §135)**

A. The applicant shall assign a specific, unique number or other mark when the seed is conditioned and bagged.

B. Each container in a given lot of seed shall be marked with the number or other mark assigned to that lot.

C. Seed lots may be blended if the variety and class are the same.

D. All seed must be bagged in new bags, unless other types of containers are approved by the Department of Agriculture and Forestry prior to bagging.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:195 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2712 (October 2013).

**§515. Seed Sampling
(Formerly §137)**

A. Seed sampling will be performed at the request of the grower.

B. Except as provided by §515.D.2, official samples to determine eligibility for certification shall be drawn only after the seed is conditioned.

C. Sampling of Bagged Seed

1. Each lot of seed must be stacked so as to facilitate sampling.

2. A Department of Agriculture and Forestry inspector will sample at random, by probing, a specific number of

bags from each lot. The number of bags to be sampled from each lot is as follows: five bags, plus 10 percent of the total number, not to exceed 30 bags per lot. In lots containing six bags or less, every bag will be sampled.

D. Sampling of Bulk Seed

1. Cleaned Seed in Bulk. A Department of Agriculture and Forestry inspector will collect a minimum of four samples, at intervals of 4 feet, by probing the entire depth of the bin or storage area. All samples will be blended into one representative sample for each bin or storage area.

2. Uncleaned Seed in Bulk

a. A Department of Agriculture and Forestry inspector will collect a minimum of four samples, at intervals of 4 feet, by probing the entire depth of the bin or storage area. All samples will be blended into one representative sample for each bin or storage area. The initial sample will be done only for purposes of determining moisture content and germination. Results of the germination test will be invalid after 60 days in the absence of a second sample.

b. A second representative sample will be drawn within 60 days after the first sample, after conditioning, for determining purity.

E. Analysis of samples shall be performed according to the current rules of the Association of Official Seed Analysts.

F. Resampling Policy

1. Except in special instances, as described below, only one sample shall be obtained from each certified lot.

a. When a certified seed lot fails certification requirements due to physical or mechanical purity factors, such as excess inert matter or weed seed, the seed may be reconditioned if the contaminants are separable. A complete purity analysis and germination test will be required on the reconditioned lot of seed. Certified seed rice which fails certification due to the presence of red rice seed in the sample shall be subject to the terms of Subparagraph e below.

b. Should a seed lot fail certified seed germination standards on the first laboratory test, a re-sample for germination test only for that seed lot will be permitted. Only one re-sample per seed lot will be permitted.

c. Whenever a certified seed lot is divided into sub-lots, both a purity and a germination test will be required for all sub-lots.

d. The last and most recent laboratory test report for a seed lot shall be the final analysis used to establish the eligibility for certification and will determine the information to be placed on the tag.

e. When a certified seed rice lot fails certification requirements due to the presence of one red rice seed in the original four pound sample, then a second 8 pound sample may be drawn from the lot. If one or more red rice seeds are found in the second sample, the lot will be disqualified on the basis of red rice content. If no red rice seed is found in the second sample, the lot would meet certification requirements. Certified seed rice whose original sample contains the presence of more than one red rice seed may not be re-sampled.

2. A fee of \$15 will be charged for each re-sample, which fee shall be due and payable when the request for re-sample is initially made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:195 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 19:888 (July 1993), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2712 (October 2013).

§517. Listing of Certified Seed Conditioning Plants (Formerly §139)

A. Seed conditioning plants desiring to be listed in the Department of Agriculture and Forestry's roster of seed conditioning plants must make a written application for inclusion on the list.

B. The Department of Agriculture and Forestry will issue certificates to all seed conditioning plants making application for inclusion on the listing, on an annual basis, each such certificate to expire on June 30 following date of issue.

C. The following requirements must be met by processors of all classes of certified seed.

1. Facilities shall be available to perform processing without introducing admixtures.

2. Identity of the seed must be maintained at all times.

3. Records of all operations relating to certification shall be completed and adequate to account for all incoming seed and final disposition of seed.

4. Processors shall permit inspection by the certifying agency of all records, equipment, storage and processing facilities pertaining to all classes of certified seed.

5. Processors shall designate an individual who shall be responsible to the certifying agency for performing such duties as may be required by the certifying agency.

6. Seed lots of the same variety and class may be blended and the class retained. If lots of different classes are blended, the lowest class shall be applied to the resultant blend. Such blending can only be done when authorized by the certifying agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:196 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 20:642 (June 1994), LR 31:35 (January 2005), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2713 (October 2013).

§519. Processing of Certified Seed (Formerly §141)

A. Bagging

1. All seed approved for certification must be packaged in new 100 pound containers or less, except as provided by §141.A.1-2.

2. Registered Class of rice and small grains (wheat and oats):

a. new super-bags or Q-Bit bulk containers (or its equivalent as determined by the Louisiana Department of Agriculture and Forestry);

b. each super-bag or Q-Bit container of registered seed must be sealed in an LDAF approved manner that prevents removal and re-attachment without tampering being obvious. Seals shall be attached after filling and/or sampling is completed.

3. Certified class of rice and small grains (wheat and oats):

a. new or reusable super-bags or Q-Bit bulk containers (or its equivalent as determined by the Louisiana Department of Agriculture and Forestry).

NOTE: Reusable containers must be cleaned in a manner approved by the Louisiana Department of Agriculture and Forestry.

B. General Labeling Requirements

1. Each container, regardless of size, of all classes of certified seed offered for sale must bear an official certification label issued by the Louisiana Department of Agriculture and Forestry.

2. Labeling requirements may vary with the crop and methods of handling, but, in all instances, labels shall be attached to the containers in a secure manner.

3. The lot number of the label attached to each container must be the same as the lot number marked on the container.

4. The label shall contain the following information:

a. kind and variety;

b. where grown;

c. percentage of pure seed, crop seed, weed seed and inert matter;

d. name and number of noxious weed seeds per pound;

e. grower's name and address or code number;

f. germination percentage;

g. hard seed;

h. total germination and hard seed percentage;

i. net weight;

j. lot number; and

k. date of test.

5. Labels will be issued only for seed proven by laboratory analysis to meet required germination and purity standards.

6. The number of labels issued will be determined by the inspector's estimate of the quantity of seed at the time of sampling. All unused labels must be returned to the Louisiana Department of Agriculture and Forestry.

7. Prelabeling

a. In order to permit seedsmen to bag and label seed in advance of final laboratory reports, certification labels may be issued in advance. Such labels can be pre-issued upon receipt of completed field inspection reports showing that field production standards have been met. The state may grant a waiver on the movement of seed if an acceptable preliminary test is made on the seed lot. If pre-labeled lots fail laboratory analysis standards, all labels shall be destroyed or returned to the Louisiana Department of Agriculture and Forestry. Failure to comply with this regulation will result in suspension of future prelabeling privileges.

8. The official certification label may be printed directly on the container with prior approval of the Louisiana Department of Agriculture and Forestry.

9. When separate seed analysis labels containing warranties, treatment information, etc., are attached to containers they shall be positioned so as not to obscure certification labels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:196 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 20:643 (June 1994), LR 31:35 (January 2005), LR 31:1510 (July 2005), LR 39:1758 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2713 (October 2013).

§521. Bulk Certification Requirements (Formerly §147)

A. Limitations

1. Bulk certification shall be limited to the certified class of the following commodities:

- a. small grains (wheat and oats);
- b. rice.

2. Seed eligible for bulk certification shall meet all field and laboratory standards established for certified seed as specified in these regulations.

3. Seed certified in bulk shall not be eligible for recertification.

4. Seed certified in bulk shall only be sold by the applicant producer or by an approved retail facility. Each retail outlet must have an acceptable procedure for handling bulk certified seed to assure genetic purity and identity are maintained.

B. Application for Bulk Certification. The seed owner is responsible for making application for bulk certification and for securing prior approval of the Department of Agriculture and Forestry for the facility in which the seed will be stored.

C. Storage Requirements

1. A separate storage bin must be available for each variety that will be sold in bulk.

2. Storage bins must be constructed so that all bin openings can be sealed to prevent contamination and maintain genetic purity.

3. All bins must be clearly and prominently marked to show crop and variety, until disposal of the entire lot.

D. Sampling of Seed to Be Certified in Bulk. Seed sampling shall be conducted as provided in §515.D, except that, at the option of the applicant, the sample to determine germination is drawn.

E. Certification

1. No certified seed tags will be issued for seed certified in bulk, except as provided by §521.F.

2. For sales to an approved retail facility within the state, a Bulk Certified Seed Transfer Form will be issued to cover all bulk certified seed which meets the general requirements for seed certification and the specific requirements for the crop/variety being certified.

a. The seller shall provide a copy of the Bulk Certified Seed Transfer Form to each purchaser at time of delivery.

b. The seller shall provide a copy of each issued Bulk Certified Seed Transfer Form to the Department of Agriculture and Forestry.

c. The seller shall maintain a copy of each issued Bulk Certified Seed Transfer Form in his file, which shall be available for examination by the Department of Agriculture and Forestry upon reasonable request.

3. For sales to its final disposition, a Bulk Certified Seed Sales Certificate will be issued to cover all bulk certified seed which meets the general requirements for seed certification and the requirements for the crop/variety being certified.

a. The seller shall provide a copy of the Bulk Certified Seed Sales Certificate to each purchaser at the time of delivery.

b. The seller shall provide a copy of each issued Bulk Certified Seed Sales Certificate to the Department of Agriculture and Forestry.

c. The seller shall maintain a copy of each issued Bulk Certified Seed Sales Certificate in his file, which shall be available for examination by the Department of Agriculture and Forestry upon reasonable request.

F. Subsequent Packaging of Seed Certified in Bulk

1. If the owner of seed certified in bulk later elects to package any remaining portion of the lot, the owner must give prior notification of his intention to package the seed to the Department of Agriculture and Forestry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:567 (November 1982), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 23:1283 (October 1997), LR 26:235 (February 2000), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2714 (October 2013).

§523. Interagency Certification (Out-of-State Seed) (Formerly §149)

A. Seed to be certified by interagency action must meet the Louisiana Seed Certification Standards or comparable standards of a seed certifying agency recognized by the Louisiana Commissioner of Agriculture and Forestry.

B. Seed to be certified by interagency action must contain, on the package, evidence from another recognized certifying agency that the seed is eligible for certification.

C. The following information must accompany each lot of seed:

1. kind and variety;
2. quantity (pounds);
3. class; and
4. lot number issued by previous certifying agency.

D. Seed to be certified by interagency action must be sequentially numbered.

E. A Louisiana tag for the appropriate class of seed must be attached to all seed to be certified by interagency action.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:196 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 23:1283 (October 1997), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental

Chapter 7. Certification of Specific Crops/Varieties

Subchapter A. Grasses and Clovers

§701. Crimson Clover Seed Certification Standards

(Formerly §159)

A. Field Standards

Factor	Breeder	Foundation	Required	Certified
Land Requirement	5 yrs.	5 yrs.	3 yrs.	2 yrs.
Isolation	1,000 ft.	1,000 ft.	1,000 ft.	600 ft.
Other Varieties	None	None	0.20%	0.50%
Noxious Weeds	None	None	None	None

B. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%	2.00%
Other Varieties	None	0.10%	0.25%	1.00%
Other Crops	None	None	45 seed/lb.	90 seed/lb.
Noxious Weeds	None	None	None	None
Other Weeds	25 seed/lb.	50 seed/lb.	180 seed/lb.	360 seed/lb.
Germination	None	85.00%	85.00%	85.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:569 (November 1982), amended LR 9:198 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2715 (October 2013).

§703. Louisiana White; Louisiana White S 1, Ladino and Other White Clover Seed Certification Standards (Formerly §161)

A. Field Standards

Factor	Breeder	Foundation	Registered	Certified
Land Requirement	5 yrs. ¹	5 yrs. ¹	3 yrs. ¹	2 yrs. ²
Isolation	1,320 ft.	1,320 ft.	660 ft.	330 ft.
Other Varieties and/or Species that can be differentiated from the variety being certified	None	None	None	None
Other Crops (inseparable)	10 Plants per Acre	10 Plants per Acre	50 Plants per Acre	100 Plants per Acre

¹A foundation and/or registered field may produce only two successive seed crops following seeding except that each may be reclassified to the next lower class after being harvested for seed for two years. A stand will not be eligible to produce any class of seed after four successive seed crops.
²A certified field on which a stand of perennial plants is maintained may produce a maximum of four successive seed crops following seeding.

B. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	99.00%	98.00%	98.00%	98.00%
Inert Matter	1.00%	2.00%	2.00%	2.00%
Other Crops	None	None	45 seed/lb.	100 seed/lb.
Other Varieties	None	None	None	10 seed/lb.
Other Kinds	None	None	45 seed/lb.	90 seed/lb.
Sweet Clover	None	None	45 seed/lb.	80 seed/lb.
Other Clovers	None	None	None	None
Noxious Weeds: Bracted plantain Buckhorn plantain	None	None	None	None
Other Weeds	0.04%	0.04%	0.07%	0.14%
Wild Carrot	None	None	None	None
Germination	None	85.00%	85.00%	85.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:569 (November 1982), amended LR 9:198 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2715 (October 2013).

§705. Red Clover Seed Certification Standards .

(Formerly §163)

A. Field Standards

Factor	Foundation	Registered	Certified
*Land Requirement	5 yrs.	3 yrs.	2 yrs.
Isolation	1,320 ft.	660 ft.	330 ft.
Other Varieties	None	0.20%	0.50%

*No stand of red clover will be eligible to produce any class of certified seed after two successive seed crops. These seed crops may be produced in the same or consecutive years.

B. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	99.00%	99.00%	99.00%	99.00%
Inert Matter	1.00%	1.00%	1.00%	1.00%
Other Varieties	None	0.10%	0.25%	1.00%
Other Crops	None	18 seed/lb.	90 seed/lb.	180 seed/lb.
Noxious Weeds: Dock, Cheat, Darnel, Johnsongrass, Wild Mustard	None	45 seed/lb.	90 seed/lb.	100 seed/lb.
Dodder	None	None	None	None
Other Weeds	0.05%	0.15%	0.15%	0.25%
Germination	None	85.00%	85.00%	85.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:570 (November 1982), amended LR 9:199 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2715 (October 2013).

§707. Bahia Grass Seed Certification Standards (Formerly §155)

A. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	5 yrs.	1 yr.	1 yr.
Isolation	1,320 ft.	660 ft.	330 ft.
Other Varieties	None	None	5 Plants per Acre
Other Grass with Inseparable Seed	10 Plants per Acre	10 Plants per Acre	25 Plants per Acre
Other Crops	Other crops with seed that can be separated will be permitted in the field.		

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Varieties	0.10%	0.10%	0.25%
Noxious Weeds	None	None	None
Other Weeds	0.50%	0.50%	1.00%
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:568 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2716 (October 2013).

§709. Bermuda and Zoysia Grass Seed Certification Standards (Formerly §157)

A. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	5 yrs.	1 yr.	1 yr.
Isolation	33 ft.	33 ft.	33 ft.
*Other Varieties (per 1,000 plants)	None	1 plant	3 plants
Noxious Weeds: Johnsongrass, Cheat and Nutgrass	None	None	None
*Including all other Bermuda and Zoysia grass that can be differentiated from the variety to be certified			

B. Planting Stock Standards

Factor	Foundation	Registered	Certified
Pure Live Sprigs containing roots (minimum by count)	90.00%	90.00%	90.00%
Other Living Plants (maximum by count)	2.00%	2.00%	2.00%
Noxious Weeds: Johnsongrass, Cheat and Nutgrass	None	None	None

C. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	None	98.00%	98.00%	98.00%
Inert Matter	None	2.00%	2.00%	2.00%
Other Crops	None	0.01%	0.01%	0.25%
Noxious Weeds	None	None	None	None
Other Weeds	None	0.01%	0.01%	0.05%
Germination	None	85.00%	85.00%	85.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:568 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2716 (October 2013).

§711. Dallis Grass Seed Certification Standards (Formerly §167)

A. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	5 yrs	3 yrs	3 yrs
Isolation	60 ft.	50 ft.	50 ft.
Other Crops	10 Plants per Acre	10 Plants per Acre	100 Plants per Acre

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	40.00%	40.00%	40.00%
Inert Matter	60.00%	60.00%	60.00%
Other Varieties	0.10%	1.00%	2.00%
Other Crops	None	None	10 seed/lb.
Noxious Weeds	None	None	None
Germination	50.00%	50.0%	50.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, LR 8:571 (November 1982), amended LR 9:200 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December

1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2716 (October 2013).

§713. Annual Ryegrass Seed Certification Standards (Formerly §169)

A. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	5 yrs	1 yr.	1 yr.
Isolation	900 ft.	900 ft.	350 ft.
Other Varieties	None	1.00%	2.00%
Other Crops	0.10%	0.20%	0.30%

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	97.00%	97.00%	96.00%
Inert Matter	3.00%	3.00%	4.00%
Other Varieties	0.10%	1.00%	2.00%
Other Crops	0.10%	0.25%	0.25%
Noxious Weeds	None	None	None
Other Weeds	0.25%	0.25%	0.25%
Germination	85.00%	85.00%	85.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, LR 8:572 (November 1982), amended LR 9:197 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2717 (October 2013).

§715. California Bulrush (*Schoenoplectus californicus*) Clonally Propagated Plant Certification Standards (Formerly §171)

A. The department shall issue numbered certified bulk sales certificates when requested to do so by a grower who has met the requirements and standards set forth in this Section. The numbered certified certificates shall accompany each shipment of certified material.

B. Definition of Classes. For the purpose of this Section, the word *material* refers to clonally propagated plants with identical genotypes.

1. Breeder material shall be maintained by the plant breeder, or their respective authorized agent(s).

2. Foundation material shall be the vegetative increase of breeder material.

3. Registered material shall be the vegetative increase of either breeder or foundation material.

4. Certified material shall be the vegetative increase of breeder, foundation, or registered material.

C. DNA Fingerprinting Requirements

1. DNA fingerprinting samples shall be taken by Louisiana Department of Agriculture and Forestry (LDAF) inspectors and submitted to an LDAF approved laboratory for testing, according to the following guidelines:

a. foundation material:

i. fingerprinting is required at year of transplant and every other year thereafter;

ii. ponds—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—ten percent or 190 random plants, whichever is smaller;

b. registered material:

i. fingerprinting is required at year of transplant and every three years thereafter;

ii. ponds—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—five percent or 94 random plants, whichever is smaller;

c. certified material:

i. fingerprinting is required at year of transplant and every five years thereafter;

ii. ponds—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—five percent or 94 random plants, whichever is smaller.

2. The LDAF shall have the right to re-inspect, re-sample and re-test production fields, ponds and containers/tanks that are out-of-tolerance for DNA fingerprinting prior to final certification.

a. Resampling of fields that are out-of-tolerance for DNA fingerprinting shall be at the request of the producer.

3. Additional DNA fingerprinting samples shall be required of a certified grower when the integrity of the genetic purity of a production field, pond or container/tank has been jeopardized by any means prior to final certification.

D. Production Requirements

1. General production requirements for all classes and production methods:

a. only one variety of California bulrush shall be grown per production field, pond or container/tank;

b. all seed heads shall be routinely removed from plants after flowering begins, to ensure that viable seed are not produced;

c. production fields, ponds, container/tanks shall meet the minimum isolation distance at all points;

d. pond requirements:

i. ponds shall be contained by levees;

ii. ponds of different varieties shall be separated by the minimum required isolation distance and must have individual water supplies and water drainage capabilities for each produced variety;

e. container/tank requirements:

i. soil used for container/tank production shall:

(a) come from an area that has not produced California bulrush for a minimum of one year; and

(b) be free of visible California bulrush rhizomes and stems prior to transplanting.

2. Certified Class

a. Production fields of the certified class may be located within natural tidal influenced areas.

E. Land Requirements

1. In order to be eligible for the production of all certified classes, production fields, ponds and containers/tanks of *Schoenoplectus californicus* shall:

a. be left undisturbed for a minimum of four weeks prior to planting; and

b. be found to be free of California bulrush and noxious and objectionable weeds.

F. Grower Inspections

1. Production fields, ponds and containers/tanks shall be inspected by the grower to ensure that all requirements of this Section are met prior to each inspection by the LDAF.

G. LDAF Inspections

1. Production fields, ponds and containers/tanks shall be made accessible for inspection by the grower.

2. First Year (year of transplant)

a. Production fields, ponds and containers/tanks shall be inspected by LDAF inspectors within four weeks prior to transplanting to ensure production fields, ponds and containers/tanks are free of volunteer California bulrush plants.

b. Production fields, ponds and containers/tanks shall be non-flooded at time of inspection.

c. Production fields, ponds and containers/tanks shall be inspected between 60 and 120 days from date of establishment for the purpose of collecting DNA fingerprinting samples.

d. Production fields, ponds and containers/tanks shall be inspected by the LDAF inspectors a minimum of once a year to ensure that all requirements of this Section are being met.

e. The LDAF shall have the right to re-inspect, re-sample, and re-test production fields, ponds and containers/tanks that are out-of-tolerance for DNA fingerprinting prior to final certification.

f. Additional inspections may be performed at the discretion of the LDAF at any time without prior notice.

3. Subsequent Years

a. Production fields, ponds and containers/tanks shall be inspected by the LDAF inspectors a minimum of once a year to ensure that all requirements of this Section are being met.

b. The LDAF shall have the right to re-inspect, re-sample and re-test production fields, ponds and containers/tanks that are out-of-tolerance for DNA fingerprinting prior to final certification.

c. Additional inspections may be performed at the discretion of the LDAF at any time without prior notice.

H. Field Standards

Factor	Foundation	Registered	Certified
Maximum Age: Production Unit Life From Transplant Date ¹	4 years	6 years	Unlimited
Isolation: Minimum Clonal/Seed Separation Between Production Units			
Pond Production	Clonal - 20 ft.: Seed - 150 ft.	Clonal - 20 ft.: Seed - 150 ft.	Clonal - 20 ft.: Seed - 150 ft.
Tank Production	Clonal - 1 variety per tank: Seed - 150 ft.	Clonal - 1 variety per tank: Seed - 150 ft.	Clonal - 1 variety per tank: Seed - 150 ft.
Field Production	N/A	N/A	200 ft.
Plant Variants: Maximum Variants Allowed.			
DNA Fingerprints	1 percent	2 percent	25 percent
Visual Inspections	3 plants per 5,400 sq. ft.	5 plants per 5,400 sq. ft.	10 plants per 5,400 sq. ft.
Harmful Diseases ²	None	None	None

Factor	Foundation	Registered	Certified
Noxious or Objectionable Weeds ³	None	None	≤ 5 plants per 5,400 sq. ft.
Land Requirements	1 year	1 year	1 year
Other Crops ⁴	None	None	None

¹ No maximum age for a certified class production unit so long as the unit continues to meet all requirements of this Section

² Diseases seriously affecting quality of seed and transmissible by planting stock

³ Cyperus spp. (Sedge), Eleocharis spp. (Spikerush), Phragmites australis (Roseau cane), Typha spp. (Cattail)

⁴ Spartina alterniflora (Smooth cordgrass), Spartina patens (Marshhay cordgrass), Spartina cynosuroides (Big cordgrass), Spartina spartinae (Gulf cordgrass), Distichlis spicata (Saltgrass), Paspalum vaginatum (Seashore paspalum)

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 37:2980 (October 2011), LR 39:1759 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2717 (October 2013).

§717. Sea Oats (*Uniola Paniculata*) Clonally Propagated Plant Certification Standards (Formerly §183)

A. The department shall issue numbered certified bulk sales certificates when requested to do so by a grower who has met the requirements and standards set forth in this Section. The numbered certified certificates shall accompany each shipment of certified material.

B. Definition of Classes. For the purpose of this Section, the word *material* refers to clonally propagated plants with identical genotypes.

1. Breeder material shall be maintained by the plant breeder, or their respective authorized agent(s).

2. Foundation material shall be the vegetative increase of breeder material.

3. Registered material shall be the vegetative increase of either breeder or foundation material.

4. Certified material shall be the vegetative increase of breeder, foundation, or registered material.

C. DNA Fingerprinting Requirements

1. DNA fingerprinting samples shall be taken by (LDAF) inspectors and submitted to an LDAF approved laboratory for testing, in accordance with the following guidelines:

a. foundation material:

i. fingerprinting is required at year of transplant and every other year thereafter;

ii. plots—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—ten percent or 190 random plants, whichever is smaller;

b. registered material:

i. fingerprinting is required at year of transplant and every three years thereafter;

ii. plots—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—five percent or 94 random plants, whichever is smaller;

c. certified material:

- i. fingerprinting is required at year of transplant and every five years thereafter;
- ii. plots—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;
- iii. containers—five percent or 94 random plants, whichever is smaller.

2. The LDAF shall have the right to re-inspect, re-sample and re-test production plots and containers that are out-of-tolerance for DNA fingerprinting prior to final certification.

a. Resampling of production plots and container production units that are out-of-tolerance for DNA fingerprinting shall be at the request of the producer.

3. Additional DNA fingerprinting samples shall be required of a certified grower when the integrity of the genetic purity of a production plot or container production unit has been jeopardized by any means prior to final certification.

D. Production Requirements

1. General requirements for all classes and production methods:

a. only one variety of sea oats shall be grown per production plot or container production unit;

b. all seed heads shall be routinely removed from plants after flowering begins, to ensure that viable seed are not produced.

2. Plot requirements:

a. production plots shall be free of sea oats plants for a minimum of four weeks prior to transplanting;

b. production plots and container production units shall meet the minimum isolation distance at all points.

3. Container requirements:

a. soil used for container production shall:

i. come from an area that has not produced sea oats for a minimum of one year; and

ii. be free of visible sea oats rhizomes and stems prior to transplanting.

E. Land Requirements

1. To be eligible for the production of all certified classes of seed; production plots and containers of *Uniola paniculata* shall:

a. be left undisturbed for a minimum of four weeks prior to planting; and

b. found to be free of sea oats and noxious and objectionable weeds.

F. Grower Inspections

1. Production plots and containers shall be inspected by grower to ensure that all requirements of this Section are met prior to each inspection by the LDAF.

G. LDAF Inspections

1. Plots and containers shall be made accessible for inspection by the grower.

2. First Year (year of transplant)

a. Production plots and containers shall be inspected by LDAF inspectors within four weeks prior to transplanting to ensure they are free of volunteer sea oats plants.

b. Production plots and containers shall be inspected between 60 and 120 days from date of establishment for the purpose of collecting DNA fingerprinting samples.

c. Production plots and containers shall be inspected by the LDAF inspectors a minimum of once a year to ensure that all requirements of this Section are being met.

d. The LDAF shall have the right to re-inspect, re-sample, and re-test production plots and containers that are out-of-tolerance for DNA fingerprinting prior to final certification.

e. Additional inspections may be performed at the discretion of the LDAF at any time without prior notice.

3. Subsequent Years

a. Production plots and containers shall be inspected by the LDAF inspectors a minimum of once a year to ensure that all requirements of this Section are being met.

b. The LDAF shall have the right to re-inspect, re-sample and re-test production plots and containers that are out-of-tolerance for DNA fingerprinting prior to final certification.

c. Additional inspections may be performed at the discretion of the LDAF at any time without prior notice.

H. Field Standards

Factor	Foundation	Registered	Certified
Maximum Age: Production Unit Life From Transplant Date ¹	4 years	6 years	Unlimited
Isolation: Minimum Clonal/Seed Separation Between Production Units			
Plot Production	Clonal - 20 ft.: Seed - 150 ft.	Clonal - 20 ft.: Seed - 150 ft.	Clonal - 20 ft.: Seed - 150 ft.
Container Production Unit	Clonal - 1 variety per unit: Seed - 150 ft.	Clonal - 1 variety per unit: Seed - 150 ft.	Clonal - 1 variety per unit: Seed - 150 ft.
Plant Variants: Maximum Variants Allowed.			
DNA Fingerprints	1 percent	2 percent	25 percent
Visual Inspections	3 plants per 5,400 sq. ft.	5 plants per 5,400 sq. ft.	10 plants per 5,400 sq. ft.
Harmful Diseases ²	None	None	None
Noxious or Objectionable Weeds ³	None	None	≤ 5 plants per 5,400 sq. ft.
Land Requirements	1 year	1 year	1 year
Other Crops ⁴	None	None	None

¹ No maximum age for a certified class production unit so long as the unit continues to meet all requirements of this Section

² Diseases seriously affecting quality of seed or vegetatively propagated stock and transmissible by planting stock

³ *Cyperus* spp. (Sedges), *Panicum repens* (Torpedograss), *Phragmites australis* (Roseau cane), *Fimbristylis* spp. (Fimbristylis), *Tamarix* spp. (Salt cedar), *Cenchrus* spp. (Sandbur), *Suaeda linearis* (Sea-blite), *Acacia farnesiana* (Sweet acacia)

⁴ *Spartina patens* (Marshhay cordgrass), *Spartina spartinae* (Gulf cordgrass), *Sporobolus virginicus* (Dropseed), *Distichlis spicata* (Saltgrass), *Schizachyrium maritimum* (Seacoast bluestem), *Paspalum vaginatum* (Seashore paspalum), *Panicum amarum* (Beach panicgrass)

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 37:2982 (October 2011), LR 39:1760 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2718 (October 2013).

**§719. Smooth Cordgrass (*Spartina alterniflora*)
Certification Standards
(Formerly §193)**

A. The department shall issue numbered certified bulk sales certificates when requested to do so by a grower who has met the requirements and standards set forth in this Section. The numbered certified certificates shall accompany each shipment of certified material.

B. Definition of Classes. For the purpose of this Section, the word *material* refers to clonally propagated plants with identical genotypes.

1. Breeder material shall be maintained by the plant breeder, or their respective authorized agent(s).

2. Foundation material shall be the vegetative increase of breeder material.

3. Registered material shall be the vegetative increase of either breeder or foundation material.

4. Certified material shall be the vegetative increase of breeder, foundation, or registered material.

C. DNA Fingerprinting Requirements

1. DNA fingerprinting samples shall be taken by LDAF inspectors and submitted to an LDAF approved laboratory for testing, in accordance with the following guidelines:

a. foundation material:

i. fingerprinting is required at year of transplant and every other year thereafter;

ii. ponds—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—ten percent or 190 random plants, whichever is smaller;

b. registered material:

i. fingerprinting is required at year of transplant and every three years thereafter;

ii. ponds—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—five percent or 94 random plants, whichever is smaller;

c. certified material:

i. fingerprinting is required at year of transplant and every five years thereafter;

ii. ponds—one sample/1000 sq. ft., with a minimum of 10 samples, regardless of size;

iii. containers—five percent or 94 random plants, whichever is smaller.

2. The LDAF shall have the right to re-inspect, re-sample and re-test production fields, ponds and containers/tanks that are out-of-tolerance for DNA fingerprinting prior to final certification.

3. Resampling of fields that are out-of-tolerance for DNA fingerprinting shall be at the request of the producer.

4. Additional DNA fingerprinting samples shall be required of a certified grower when the integrity of the genetic purity of a production field, pond or container/tank has been jeopardized by any means prior to final certification.

D. Production Requirements

1. General production requirements for all classes and production methods:

a. only one variety of smooth cordgrass shall be grown per production field, pond or container/tank;

b. all seed heads shall be routinely removed from plants after flowering begins, to ensure that viable seed are not produced.;

c. production fields, ponds, container/tanks shall meet the minimum isolation distance at all points;

d. pond requirements:

i. ponds shall be contained by levees;

ii. ponds of different varieties shall be separated by the minimum required isolation distance, and must have individual water supplies and water drainage capabilities for each produced variety;

e. container/tank requirements:

i. soil used for container/tank production shall:

(a) come from an area that has not produced smooth cordgrass for a minimum of one year; and

(b) be free of visible smooth cordgrass rhizomes and stems prior to transplanting.

2. Certified Class

a. Production fields of the certified class may be located within natural tidal influenced areas.

E. Land Requirements. In order to be eligible for the production of all certified classes; production fields, ponds and containers/tanks of *Spartina alterniflora* shall:

1. be left undisturbed for a minimum of four weeks prior to planting; and

2. found to be free of smooth cordgrass and noxious and objectionable weeds.

F. Grower Inspections

1. Production fields, ponds and containers/tanks shall be inspected by grower to ensure that all requirements of this Section are met prior to each inspection by the LDAF.

G. LDAF Inspections

1. Production fields, ponds and containers/tanks shall be made accessible for inspection by the grower.

2. First Year (year of transplant)

a. Production fields, ponds and containers/tanks shall be inspected by LDAF inspectors within four weeks prior to transplanting to ensure production fields, ponds and containers/tanks are free of volunteer smooth cordgrass plants.

i. Production fields, ponds and containers/tanks shall be non-flooded at time of inspection.

b. Production fields, ponds and containers/tanks shall be inspected between 60 and 120 days from date of establishment for the purpose of collecting DNA fingerprinting samples.

c. Production fields, ponds and containers/tanks shall be inspected by the LDAF inspectors a minimum of once a year to ensure that all requirements of this Section are being met.

d. The LDAF shall have the right to re-inspect, re-sample, and re-test production fields, ponds and containers/tanks that are out-of-tolerance for DNA fingerprinting prior to final certification.

e. Additional inspections may be performed at the discretion of the LDAF at any time without prior notice.

3. Subsequent Years

a. Production fields, ponds and containers/tanks shall be inspected by the LDAF inspectors a minimum of once a year to ensure that all requirements of this Section are being met.

b. The LDAF shall have the right to re-inspect, re-sample and re-test production fields, ponds and containers/tanks that are out-of-tolerance for DNA fingerprinting prior to final certification.

c. Additional inspections may be performed at the discretion of the LDAF at any time without prior notice.

H. Field Standards

Factor	Foundation	Registered	Certified
Maximum Age: Production Unit Life From Transplant Date ¹	4 years	6 years	Unlimited
Isolation: Minimum Clonal/Seed Separation Between Production Units			
Pond Production	Clonal - 20 ft.: Seed - 150 ft.	Clonal - 20 ft.: Seed - 150 ft.	Clonal - 20 ft.: Seed - 150 ft.
Tank Production	Clonal - 1 variety per tank: Seed - 150 ft.	Clonal - 1 variety per tank: Seed - 150 ft.	Clonal - 1 variety per tank: Seed - 150 ft.
Field Production	N/A	N/A	200 ft.
Plant Variants: Maximum Variants Allowed.			
DNA Fingerprints	1 percent	2 percent	25 percent
Visual Inspections	3 plants per 5,400 sq. ft.	5 plants per 5,400 sq. ft.	10 plants per 5,400 sq. ft.
Harmful Diseases ²	None	None	None
Noxious or Objectionable Weeds ³	None	None	≤ 5 plants per 5,400 sq. ft.
Land Requirements	1 year	1 year	1 year
Other Crops ⁴	None	None	None

¹ No maximum age for a certified class production unit so long as the unit continues to meet all requirements of this Section

² Diseases seriously affecting quality of seed and transmissible by planting stock

³ *Salvinia* spp. (*Salvinia*), *Cyperus* spp. (*Sedge*), *Eleocharis* spp. (*Spike rush*), *Phragmites australis* (*Roseau cane*), *Typha* spp. (*Cattail*)

⁴ *Spartina patens* (*Marshhay cordgrass*), *Spartina cynosuroides* (*Big cordgrass*), *Spartina spartinae* (*Gulf cordgrass*), *Distichlis spicata* (*Saltgrass*), *Schoenoplectus californicus* (*California bulrush*), *Paspalum vaginatum* (*Seashore paspalum*)

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 37:2983 (October 2011), LR 39:1761 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2720 (October 2013).

§721. Tall and Meadow Fescue Seed Certification Standards (Formerly §211)

A. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	5 yrs.	2 yrs.	2 yrs.
Isolation	900 ft.	330 ft.	330 ft.
Other Varieties	10 Plants per Acre	10 Plants per Acre	100 Plants per Acre

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	95.00%
Inert Matter	2.00%	2.00%	5.00%
Other Varieties	0.01%	1.00%	2.00%
Other Crops	None	None	10 seed/lb.
Noxious Weeds	None	None	None
Other Weeds	50 seed/lb.	50 seed/lb.	360 seed/lb.
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:586 (November 1982) amended LR 9:197 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986, repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2721 (October 2013).

§723. Turf and Pasture Grass Certification Standards (Formerly §219)

A. Classes of Seed. The word *seed* shall be understood to include all propagated materials in this Section.

1. Foundation shall be the vegetative increase of Breeder seed.

2. *Registered shall be the vegetative increase of Foundation seed.

3. Certified shall be the vegetative increase of Registered seed.

*A grower may increase his acreage on his own farm on a limited basis with the approval of the Louisiana Department of Agriculture and Forestry.

B. Land Requirements

1. Sod and Sprigs (pre-planting inspections)

a. A field to be eligible for the production of all certified classes of sod shall be left undisturbed for a minimum of four weeks prior to planting and found to be free of noxious and objectionable weeds.

b. A recommended soil fumigation may be applied by a licensed applicator, followed by an inspection by the Louisiana Department of Agriculture and Forestry a minimum of four weeks after the application, to ensure no emergence of noxious and objectionable weeds prior to planting.

C. Field Inspections. Turf Grasses and Pasture Grasses entered into the certification program shall be inspected at least three times a year: first (April-May); second (August-September); third (December-January) to ensure the quality of the grasses has met or exceeded the minimum standards set forth in these regulations. If a field is found to be deficient in meeting the standards then the producer has the option of spot roguing the undesirable, if the Louisiana Department of Agriculture and Forestry deems possible, and call for a reinspection of the crop.

D. Field Standards

Factor	Foundation	Registered	Certified
Turf Grasses (Sprigs and Sod)			
Other Varieties	None	None	1 Plant/ 1000 sq.ft.
Other Crops	None	None	1 Plant/ 1000 sq.ft.
Noxious and Objectionable Weeds	None	None	None
Harmful Diseases	None	None	None
Isolation	6 ft.	6 ft.	6 ft.
Pasture Grass (Sprigs)			
Other Varieties	None	1 Plant/ 1000 sq.ft.	3 Plants/ 1000 sq.ft.
Other Crops	None	None	3 Plants/ 1000 sq.ft.
Noxious and Objectionable Weeds	None	None	None
Harmful Diseases	None	None	None
Isolation	30 ft.	30 ft.	30 ft.

1. Other varieties consist of other strains of the species that can be differentiated from the variety or varieties that are being inspected.

2. Noxious and objectionable weeds. Noxious and objectionable weeds are with the inclusions of, but not limited to, the following plants: Virginia button weed (*Diodia virginiana*); dallisgrass (*Paspalum dilatatum*); crabgrass (*Digitaria spp.*); goosegrass (*Eleusine indica*); bahiagrass (*Paspalum notatum*); torpedograss (*Panicum repens*); nutgrass (*Cyperus esculentus, C. rotundus*).

3. Harmful Diseases. Harmful diseases are diseases that seriously affect the quality of grasses and are transmitted by planting stock.

4. Isolation. Isolation shall be a barren strip or an approved crop to maintain purity without the risk of contamination.

E. Planting Stock Standards

Factor	Foundation	Registered	Certified
Turf Grass			
Pure Live Plants	90.00%	90.00%	90.00%
Noxious and Objectionable Weeds	None	None	None
Other Varieties	None	0.05%	0.05%
Other Crop	None	None	0.05%
Harmful Diseases	None	None	None
Pasture Grass			
Pure Live Sprigs containing roots (minimum by count)	90.00%	90.00%	90.00%
Other Live Plants (maximum by count)	2.00%	2.00%	2.00%
Noxious Weeds	None	None	None

F. Reporting System

1. Issuing Certificates

a. The grower will be issued numbered certificates of certification and tags by the Louisiana Department of Agriculture and Forestry upon request that must accompany each load of certified grass sold.

b. The grower is responsible for completing the forms and returning the appropriate copies to the Louisiana Department of Agriculture and Forestry within 10 working days of issuance.

2. Tagging System

a. Upon meeting the standards set forth in these regulations the certified crop must have attached to the invoice two tags: A) one from the seed certification division; and B) one from the horticulture division of the Department of Agriculture and Forestry.

b. This two-tag system shall distinguish the crop to have met or exceeded the requirements set by both divisions of the Department of Agriculture and Forestry.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 9:204 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 16:847 (October 1990), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2721 (October 2013).

§725. Vetch Seed Certification Standards (Formerly §221)

A. Classes of Vetch Seed

1. Non-Reseeding Varieties. Recognized certified seed classes shall be breeder, foundation, registered and certified vetch seed.

2. Hard-Seeded Varieties. Whenever a field of hard-seeded vetch has been established to produce either breeder, foundation, registered or certified seed, the same certified seed class can be produced from that field as long as it remains in production and meets minimum seed certification standards.

B. Field Inspection. Field Inspection shall be made at flowering time or before harvest when off-types and varietal mixtures can best be identified.

C. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	5 yrs.	3 yrs.	2 yrs.
Isolation	10 ft.	10 ft.	10 ft.
Self-Pollinating Varieties			
Cross-Pollinating Varieties	400 ft.	400 ft.	400 ft.
Other Varieties and Off-Types	1 per 1,000	1 per 400	1 per 100
Other Crops	1 per 4,000	1 per 2,000	1 per 400
Noxious Weeds (inseparable)	None	None	None

D. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Total Other Crops	0.35%	0.75%	1.50%
Other Varieties	0.10%	0.25%	1.00%
Noxious Weeds	None	None	None
Other Weeds	0.10%	0.25%	0.25%
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 9:205 (April 1983), amended LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2722 (October 2013).

§727 - §739. Reserved

Subchapter B. Grain and Row Crop Seeds

§741. Hybrid Seed Corn Certification Standards (Formerly §165)

A. Eligibility Requirements. Hybrid corn may be one of the following.

1. *Single Cross*—the first generation hybrid between two inbred lines.
2. *Double Cross*—the first generation hybrid between two single crosses.
3. *Three-Way Cross*—a first generation hybrid between a single cross and an inbred line.
4. *Top Cross*—the first generation hybrid of a cross between an inbred line and an open-pollinated variety or the first generation hybrid between a single cross and an open-pollinated variety.

5. *Foundation Single Cross*—a single cross used in the production of a double cross, a three-way, or a top cross.

B. Field Inspection

1. Seed fields shall be inspected at least once prior to the pollination period for purity as to plant type. Any off-type or doubtful plants must be destroyed before they shed pollen.

2. At least three field inspections shall be made during the pollinating period, said inspections to be made without previous notification to the grower.

C. Field Standards

1. Unit of Certification. The entire acreage of any one specific commercial hybrid must be entered for certification.

2. Isolation Requirements. Fields in which commercial hybrid corn is being produced must be so located that the female parent is not less than 660 feet in all directions from other corn of a different kernel color or type (sweet, pop, flint, white, red, etc.).

3. Border Rows. When the kernel type and color of the corn in the contaminating field are the same as those of the parent in the crossing field, the isolation distance may be modified by the planting of border rows of the pollen parent. The following table indicates the minimum number of

border rows required for fields of various sizes when located at different distances from other corn.

Minimum Distance from Other Corn	Field Size	
	1 to 20 acres	20 acres or more
Feet	(Minimum) Border Rows	
410	0	0
370	2	1
330	4	2
290	6	3
245	8	4
205	10	5
165	12	6
125	14	7
85	16	8
0		10

a. The above isolation requirements do not apply to crossing fields when the same male or pollen parent is used in each. In such cases the two fields must be clearly divided by use of an area not less than 14 feet or a natural boundary which is permanent and distinctive (e.g., ditch, road, headland, etc.).

4. Detasseling

a. A commercial hybrid will be disqualified for certification when 5 percent or more of the female seed parent plants have receptive silk:

- i. if more than 1 percent of the female seed parent plants have shed pollen on one inspection; or
- ii. if a total of 2 percent of the female seed parent plants have shed pollen on three inspections.

b. Sucker tassels, portions of tassels or tassels on main plants will be counted as shedding pollen when 2 inches or more of the central stem, the side branches, or a combination of the two have anthers extended from the glumes. In cases where a few silks are out and tassels of the seed parent have begun to shed pollen, the field can be approved by immediate and complete detasseling of the seed parent and removal of the ear shoots with exposed silks, if done to the satisfaction of the Department of Agriculture and Forestry.

D. Seed Standards

Factor	Certified Class
Pure Seed	98.00%
Inert Matter	2.00%
Other Varieties	0.50%
Noxious and Other Weeds	None
Off-Color, Off-Type Kernels	0.10%
Germination	90.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:572 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 13:156 (March 1987), repromulgated LR 13:232 (April 1987), amended LR 15:613 (August 1989), LR 20:643 (June 1994), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2723 (October 2013).

§743. Seed Corn (Open-Pollinated) Seed Certification Standards (Formerly §173)

A. Field Standards

Factor	Foundation	Registered	Certified
*Isolation	1,200 ft.	1,200 ft.	1,200 ft.
Other Varieties	None	None	0.50%
Off-type Plants	0.20%	0.20%	0.50%

* Does not apply to other corn with different maturity dates.

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Crops	None	None	5 seed/lb.
Other Varieties	None	None	3 seed/lb.
Noxious and Other Weeds	None	None	None
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:574 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:200 (December 1986), LR 23:1284 (October 1997), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2724 (October 2013).

§745. Millet Seed Certification Standards (Formerly §175)

A. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	1,320 ft.	1,320 ft.	825 ft.
Other Varieties	None	1 Plant per Acre	10 Plants per Acre

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Crops	None	None	None
Other Varieties	None	5 seed/lb.	10 seed/lb.
Noxious Weeds	None	None	None
Other Weeds	5 seed/lb.	5 seed/lb.	5 seed/lb.
Germination	75.00%	75.00%	75.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:575 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 23:1284 (October 1997), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2724 (October 2013).

§747. Rice Seed Certification Standards (Formerly §177)

A. Isolation Requirements

1. Fields offered for certification must be clearly separated from other fields by a ditch, levee, roadway, fence, or barren strip a minimum of 10 feet if the adjoining crop is the same variety and class.

2. In addition to the preceding regulations, the following isolation distances will pertain if the adjoining crop is a different class or different variety.

Number of Feet from Same Variety/Different Class Planted by			
Ground		Air	
Drill	Broadcast	Right Angle	Parallel
10	10	1,320	10
Number of Feet from Other Varieties/All Classes Planted by			
Ground		Air	
Drill	Broadcast	Right Angle	Parallel
20	100	1,320	100

3. Any part of the applicant's field or fields which are closer than these distances must be harvested prior to final inspection or plowed up. Failure to comply with this requirement will disqualify the entire field.

B. Field Standards

Factor	Breeder	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.	1 yr.
Other Varieties	None	None	10 Plants per Acre	25 Plants per Acre
*Harmful Diseases	None	None	None	None
Noxious Weeds: Red Rice (including Black Hull Rice)	None	None	None	1 Plant per 10 Acres
Spearhead	None	None	None	2 Plants per Acre
Curly Indigo	None	None	4 Plants per Acre	4 Plants per Acre

*Diseases seriously affecting quality of seed and transmissible by planting stock.

C. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%	2.00%
Other Crops, including Other Varieties	None	None	None	2 seed/lb.
Off-Color Grains, if of similar size, quality and maturity	None	5 seed/lb.	10 seed/lb.	20 seed/lb.
Noxious Weeds: Red Rice (including Black Hull Rice)	None	None	None	None**

Factor	Breeder	Foundation	Registered	Certified
Spearhead, Curly Indigo and Mexican Weed	None	None	None	None
Other Weeds	0.05%	0.05%	0.05%	0.10%
Germination		80.00%	80.00%	80.00%
**Four pounds shall be hulled from each lot to determine red rice content.				

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:576 (November 1982), amended LR 9:201 (April 1983), LR 9:754 (November 1983), LR 10:495 (July 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 13:157 (March 1987), LR 13:233 (April 1987), LR 14:606 (September 1988), LR 14:694 (October 1988), LR 15:613 (August 1989), LR 19:888 (July 1993), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2724 (October 2013).

§749. Seed Irish Potato Certification Standards (Formerly §185)

A. Inspections

1. At least two field inspections shall be made.
2. An inspection shall be made of the tubers at the time of shipment.

B. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	10 ft.	10 ft.	10 ft.
Other Varieties and Off-type Plants	None	None	0.10%
Diseases*	0.20%	0.20%	0.20%
Mild Mosaic	0.50%	0.50%	5.00%
Sclerotium Rolfsii Wilt	0.50%	0.50%	1.00%
Potato Wart, Ring Rot, Late Blight	1.00%	1.00%	1.00%
Total Diseases	0.30%	0.30%	0.30%
Harmful Insects: Tuber Moth	None	None	None
*Rugose mosaic, leafroll, spindle tuber, yellow dwarf, witches' broom, haywire, giant hill, rosette, spinach leaf, curly dwarf.			

C. Tuber Standards

Factor	Foundation	Registered	Certified
Stem End Discoloration	2.50%	2.50%	5.00%
Hair Sprout	0.50%	0.50%	5.00%
Spindle Tuber	0.20%	0.20%	1.00%
Scab and Rhizoctonia*	6.00%	6.00%	6.00%
Net Necrosis	0.50%	0.50%	5.00%
Late Blight, Golden and Potato Rot, Potato Wart and Ring Rot	1.00%	1.00%	1.00%
Tuber Moth	None	None	None
Sclerotium Rolfsii Wilt	0.50%	0.50%	1.00%
Nematodes (Root-Knot)**	1.00%	1.00%	1.00%
*6 percent of tubers by weight have more than 5 percent of the surface covered by scab or rhizoctonia.			
**1 percent of tubers by weight showing nematode (root-knot) infection.			

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:577 (November 1982), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 20:643 (June 1994), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2725 (October 2013).

§751. Seed Irish Potato Certification Standards (Out-of-State) (Formerly §187)

A. Conditions governing shipment or movement of seed Irish potatoes into Louisiana shall conform to the following.

1. Seed Irish potatoes must have passed field and storage seed certification requirements of the proper certifying agency. The tolerances for insects and diseases shall be the same as those set forth in the certified seed regulation for seed Irish potatoes (§751).

2. Each container of seed moved into, offered for sale, or sold in Louisiana shall have attached thereto an official foundation, registered, or certified seed tag issued by the proper certifying agency in the state of origin.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:578 (November 1982), amended LR 9:201 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:606 (September 1988), LR 15:78 (February 1989), LR 20:644 (June 1994), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2725 (October 2013).

§753. Sweet Potato Certification Standards (Virus and Non Virus Tested) (Formerly §189)

A. The standards for certification of virus-tested and non virus-tested sweet potatoes are the general seed certification standards for roots, plants and cuttings as adopted in Subchapter B of this Part and the following specific standards.

B. The following definitions apply to this Section only.

Certified G0 Plant—a plant grown in a greenhouse and which has been produced by a certified greenhouse grower from a foundation plant.

Daughter Plant—a plant produced by cuttings from a mother plant.

Foundation Plant—a plant that has been produced by the LAES from a virus-tested nuclear stock plant recognized by LDAF if the plant is grown in a greenhouse under strict isolation in a screen cage in which only plants that are virus-tested are grown.

Mericlone—plants clonally propagated from a single meristem tip. For example, mericlone B-63 includes all plants descended from the sixty-third meristem-tip culture derived from the variety Beauregard.

Micropropagated—plant multiplication in vitro. The process includes many steps; stock plant care, explant selection and sterilization, media manipulation to obtain proliferation, rooting, acclimation, and growing on. Sweet potato is most commonly micropropagated in tissue culture by aseptic transfer of stem segments containing 1-3 nodes to sterile tissue culture medium.

Mini-Roots—storage roots produced on plants grown in certified G0 greenhouses that may be used to establish certified G2 field plantings.

Mother Plant—a plant obtained from LAES.

Nuclear Stock Plant—plant that is derived from Source Seed and which has been micropropagated, virus-tested, is apparently free of other pests, and has been evaluated in field test for trueness to variety.

Source Seed—material entering the LAES seed program obtained by methods acceptable to DAF).

Symptomatic Plant—a plant that shows an indication or symptom of a disease, mutation, pest, virus, or other problem that may affect sweet potato production.

Vine Cutting—a section of a vine, preferably 10-12 inches in length, capable of being transplanted.

Virus-Tested—a plant that has been previously tested for the presence of viruses by grafting a sweet potato shoot to the Brazilian morning glory (*Ipomoea setosa*) on at least three separate occasions and by at least one negative assay by the DNA and PCR assay for Sweet potato geminiviruses using the Li et al. method (Li, R., Salih, S., and Hurtt, S. 2004. Detection of geminiviruses in sweet potato by polymerase chain reaction. *Plant Dis.* 88:1347-1351)

C. Plant Generations

1. Mother plants may be cut repeatedly for no more than five months and the cuttings propagated to produce daughter plants.

2. Daughter plants may be cut repeatedly for no more than five months and the cuttings propagated to produce additional daughter plants. All daughter plants shall be designated as certified G0 and may be used to establish certified G1 field plantings.

3. All plants, vine cuttings and roots produced from mini-roots shall be designated as certified G2.

4. Certified G1 (Field Generation 1) plantings will be established from certified G0 plants. Vine cuttings may be taken repeatedly from this original G1 planting, to establish a second G1 planting. Vine cuttings may be taken repeatedly from the second G1 planting to establish a third G1 planting. No additional plantings may be established from this third G1 planting. All vine cuttings and roots produced during this first year of field production shall be designated as certified G1.

5. Certified G2 (Field Generation 2) plantings will be established from certified G1 stocks. Vine cuttings may be taken repeatedly from this original G2 planting, to establish a second G2 planting. Vine cuttings may be taken repeatedly from the second G2 planting, to establish a third G2 planting. No additional plantings may be established from this third G2 planting. All vine cuttings and roots produced during this second year of field production shall be designated as certified G2.

6. Certified G3 (Field Generation 3) plantings will be established from Certified G2 stocks. Vine cuttings may be taken repeatedly from this original G3 planting, to establish a second G3 planting. Vine cuttings may be taken repeatedly from the second G3 planting to establish a third G3 planting. No additional plantings may be established from this third G3 planting. All vine cuttings and roots produced during this third year of field production shall be designated as Certified G3.

D. Greenhouse Requirements for Certification of Virus-Tested Sweet Potatoes

1. LDAF must approve greenhouses before mother plants are released to the grower.

2. Mother plants grown in a greenhouse shall be kept isolated in screen cages.

3. Greenhouses used for production of mother plants shall meet the following requirements.

a. The entry points shall use a set of double doors.

b. A system for sanitizing hands and feet prior to entry into the growing areas of the greenhouse.

c. Yellow sticky traps shall be used to monitor aphids and other insects.

d. Screens of such mesh as to prevent entry of aphids shall cover all openings (vents, fans, windows, etc.).

e. A legible signs shall be prominently placed in front of every entrance to each greenhouse so as to be clearly visible by workers and other persons warning them that they shall not enter, if they are coming from the field or from non-certified greenhouses.

f. An integrated pest management program shall be in place to control aphids, whiteflies or other insects with sucking, mouthparts.

g. Cutting tools used in a greenhouse shall be decontaminated on a regular basis and shall always be decontaminated prior to being used on another group of stock plants or plant lots.

h. All growing medium, including benches, containers, etc. used in the greenhouse shall be cleaned by a method approved by LDAF.

i. All plants shall be removed from the greenhouse and the greenhouse kept free of plants for a minimum of 6 weeks between crop years.

j. No plants shall be allowed to grow within 10 feet of the greenhouse, except for turf grass used for stabilization of the soil.

k. No plants other than mother plants shall be allowed in the greenhouse.

l. Greenhouses shall be a minimum of 200 feet away from sweet potato storage sheds, cull piles or other potential sources of sweet potato viruses unless LDAF approves a closer distance.

m. Different varieties or mericlones must be clearly identified and separated.

4. Producer shall inspect vines twice weekly. If symptomatic plants are found, they shall be removed and destroyed and parent plants shall be inspected for disease symptoms. The grower shall keep a log showing that inspections were made and if plants were removed.

5. Producers shall inspect each greenhouse and its perimeter at least once weekly to ensure that the greenhouse isolation requirements are being met. LDAF shall be immediately notified if an inspection indicates that one or more of the isolation requirements have been breached.

6. LDAF shall inspect certified greenhouses at least once prior to cuttings going to the field and as needed if problems are observed. If symptomatic plants are found during these inspections the grower must rogue and dispose of these plants properly.

7. Once shipping of plants begins, final certification will not be allowed if symptomatic plants are found.

8. A Unit of Certification shall be the entire greenhouse and such unit cannot be divided for the purpose for certification.

9. Specific Greenhouse Requirements for the Certification of Virus-tested Sweet Potatoes

Maximum Tolerance Allowed		
Certified Presence or symptoms of:	Foundation Plants (LAES)	
	Bacterial Stem Rot (<i>Erwinia chrysanthemi</i>)*	0
Black Rot (<i>Ceratocystis fimbriata</i>)*	0	0
Scurf (<i>Monilochaetes infusans</i>)*	0	0
Root-Knot Nematode (<i>Meloidogyne</i> spp.)	0	0
Feathery Mottle (sweet potato feathery mottle virus [SPFMV])*	0	0
Russet Crack (a strain of SPFMV)*	0	0
Internal Cork (a virus)*	0	0
Wilt (<i>Fusarium oxysporum</i> f. sp. <i>batatas</i>)*	0	0
Sweetpotato Weevil (<i>Cylas formicarius</i>)	0	0
Exotic or hazardous pests	0	0
Variety mixture	0	0
Off-types (mutations)	0	0

*Plants or mini-roots exhibiting symptoms

E. Field Requirements for Certification of Virus-Tested and Non-Virus-tested Sweet Potatoes

1. Seed Bed Inspections and Standards

a. A seed bed field shall contain only certified sweet potato plants.

b. Prior to planting, seed sweet potatoes shall be treated with an approved pesticide approved by LDAF and in accordance with recommendations from the LAES.

c. Seed beds shall be located at least 100 feet from where sweet potatoes were grown or bedded in the previous two years, and in such manner that there will be no wash from the previous two years' seed beds or fields; or treated in a manner satisfactory to LDAF.

d. At least one seed bed inspection shall be made by LDAF to determine that quality plants are being produced and that the plants are apparently free of injurious insects and harmful diseases. Additional seed bed inspection may be made by LDAF when deemed appropriate by LDAF.

2. Field Production for Certification of Virus-Tested and Non-Virus-Tested Sweet Potatoes

a. Sweet potato seed shall not be eligible for certification if produced on land which:

- i. has produced sweet potatoes in the last 2 years;
- ii. has received manure or sweet potato residue in the last 2 years;
- iii. is subject to drainage from fields in which sweet potatoes have been grown in the last 2 years.

b. Isolation

i. Non Virus-tested sweet potato seed production fields shall have a minimum isolation distance of 20 feet.

ii. Virus-tested sweet potato seed production fields shall be isolated by a minimum of 20 feet from sweet potato fields that contain certified but non virus-tested sweet potatoes, and by a minimum of 750 feet from non-certified and non virus-tested sweet potatoes.

iii. If the seed of two virus-tested varieties are grown in the same field, they must be clearly identified and separated by at least 20 feet.

iv. Nuclear stock plants shall be maintained under strict isolation in laboratory facilities approved by LDAF and maintained by LAES and/or any contracted micropropagation provider. The facilities shall be in a clean, dust-free building that is at least 250 feet from any sweet potato field or greenhouse.

c. An LDAF approved program shall be in place to control perennial morning glories (e.g. *Ipomoea andurata*, Bigroot Morning Glory, *Ipomoea cordatotriloba* sharp-pod or cotton Morning Glory), and volunteer sweet potato plants.

d. Different varieties or mericlones will be clearly identified and separated from each other by a minimum of 20 feet.

e. Each unit of sweet potatoes that has passed field inspection shall be marked or labeled at harvest to correspond with the field unit.

3. Inspections for certification of Virus-Tested and Non-Virus-Tested Sweet Potatoes

a. The grower shall inspect fields weekly during the growing season and rogue any symptomatic plants that are found. LDAF shall be informed if any problems concerning certification requirements are found.

b. LDAF shall make a minimum of two inspections of each sweet potato seed production field during each growing season.

i. The first field inspection shall be made before vines have covered the ground so that symptomatic plants may be easily identified.

ii. The second inspection shall be made prior to harvest, but as close to harvest as is practical.

c. The unit of certification for production is a field and cannot be divided for the purpose for certification.

d. Specific Field Tolerance Requirements (Vine Inspection)

Maximum Tolerance Allowed						
Factor [†]	G1 Plants		G2 Plants		G3 Plants	
	Virus-Tested	Certified	Virus-Tested	Certified	Virus-Tested	Certified
Bacterial Stem Rot	None	None	None	5 plants/acre	None	5 plants/acre
Fusarium Wilt	None	None	None	5 plants/acre	None	5 plants/acre
Sweetpotato Weevil	None	None	None	None	None	None
Exotic/Hazardous Pests	None	None	None	None	None	None
Off-Types (Mutations)	0.05%	0.05%	0.05%	0.05%	0.10%	10 plants/acre
Variety Mixture	None	None	None	10 plants/acre	None	10 plants/acre

[†] If other severe factors are observed at time of inspection, rejection of all or a portion of a field may occur.

F. Storage Requirement for Certification of Virus-Tested and Non-Virus-Tested Sweet Potatoes

1. The procedures for cleaning and sanitizing the structure where sweet potatoes grown for certification are to be stored shall be in accordance with recommendations from the LAES and approved by LDAF and before any such sweet potatoes are stored in the structure.

2. Sweet potatoes grown for certification shall be stored in new containers (crates, pallet boxes, etc.) or used containers that have been cleaned according to sanitation guidelines approved by LDAF.

3. Certified seed roots shall be stored in a separate room from any non-certified roots.

4. Sweet potatoes from different field units shall be separated in storage by an aisle at least two feet wide.

5. LDAF shall inspect a minimum of 20 percent of each lot of sweet potatoes entered for certification during the storage inspection.

G. General Standards for Plants and Seed Roots of Virus-tested and Non-Virus-tested Sweet Potatoes

1. Plants shall be:

- a. apparently free of injurious insects, harmful diseases or other significant pests;
- b. true to variety characteristics;
- c. of good color, fresh, firm, and strong; and
- d. of satisfactory size for commercial planting (cuttings approximately 10"-12" long).

2. All such cuttings will be made at least one inch above the surface of the soil or growing medium. Slips that have been pulled are not to be used to avoid the possibility of carrying pathogens or insects that can be present on stems below the soil surface.

3. Cuttings shall be loosely packed, shipped in an upright position in boxes, and shall not be shipped with non-certified sweet potato plants.

4. Seed Roots

a. LDAF shall make one seed root storage inspection after harvest and before shipment.

b. The minimum size shall be one inch in diameter, four inches in length and 30 ounces maximum weight.

c. Specific Seed Root Tolerance Standards of Virus-Tested and Non-Virus-Tested Sweet Potatoes

H. Tagging and Certificate Reporting System

1. An official numbered certificate or tag provided by LDAF shall accompany each sale of certified sweet potato cuttings and seed roots.

a. When issuing official certificates the grower shall:

i. send a copy of each completed certificate to LDAF within 10 days after each sale; and

ii. maintain a copy of each issued certificate on file.

b. A complete record of certified sweet potato cuttings and seed roots sales shall be maintained and made available to LDAF. The record shall include the purchaser's name, the kind and variety/cultivar, the class, the date of shipment, and the number of plants or bushels shipped.

I. Quarantine of Areas Used for Certification

1. If a Sweetpotato weevil is found in any field, greenhouse, seed bed, storage or packing shed, or other structure or area affiliated with the production of certified sweet potatoes or sweet potato plants or within 300 yards of any such structure or area, then the entire area and all structures affiliated with the certification process shall be immediately quarantined in accordance with the Sweetpotato weevil quarantine regulations found in Subchapter C of Part XV of Title 7 of the Louisiana Administrative Code (LAC 7:XV.133 et seq.).

2. If any plant pest or disease subject to regulation or quarantine under Part II or Part III of Chapter 12 of Title 3 of the Louisiana Revised Statutes of 1950, (R.S. 3:1651 et seq.) that may affect sweet potato production is found in any field, greenhouse, seed bed, storage or packing shed, or other structure or area affiliated with the production of certified sweet potatoes or sweet potato plants then the entire area and all structures affiliated with the certification process may be subject to quarantine in accordance with applicable law and regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:579 (November 1982), amended LR 9:202 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 22:1210 (December 1996), LR 36:1220 (June 2010), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2725 (October 2013).

§755. Small Grain (Oats, Wheat, Rye) Seed Certification Standards (Formerly §191)

A. Field Standards

Factor	Breeder	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.	1 yr.
Isolation	None	10 ft.	10 ft.	10 ft.
Rye	660 ft.	660 ft.	660 ft.	660 ft.
Other Crops	None	None	10 Plants per Acre	30 Plants per Acre
Other Varieties	None	None	10 Plants per Acre	30 Plants per Acre
Diseases: Loose Smut	None	1.00%	1.00%	1.00%

Maximum Tolerance Allowed for Virus-tested and Non Virus-tested Sweet Potatoes		
Presence or symptoms of:	G1 (Foundation) G2 (Certified) Seed Roots	G3 (Certified) Seed Roots
Surface rots (<i>Fusarium</i> spp.) and Soft Rots (<i>Rhizopus</i> spp.)	5%	5%
Bacterial Root Rot (<i>Erwinia</i> spp.)	none	None
Black Rot (<i>Ceratocystis fimbriata</i>)	none	None
Scurf (<i>Monilochaetes infuscans</i>)	1.0%	2.0%
Streptomyces soil rot (<i>Streptomyces ipomoeae</i>)	2.5%	5.0%
Root-Knot Nematode (<i>Meloidogyne</i> spp.)	1.0%	2.0%
Russet Crack (a strain of SPFMV)	None	None
Wilt (<i>Fusarium oxysporum</i> f. sp. <i>batatas</i>)	None	None
Sweetpotato Weevil (<i>Cylas formicarius</i>)	None	None
Exotic or hazardous pests	None	None
Variety Mixture	None	None
Off-types (mutations)	0.20%	0.50%

B. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%	97.00%
Inert Matter	2.00%	2.00%	2.00%	3.00%
Other Crops	None	5 seed/lb.	5 seed/lb.	10 seed/lb.
Other Varieties	None	1 seed/lb.	5 seed/lb.	10 seed/lb.
Noxious Weeds:				
Johnsongrass	None	None	None	None
Cheat and Darnel	None	6 seed/lb.	6 seed/lb.	12 seed/lb.
Other Weeds	None	0.01%	0.02%	0.03%
Oats	None	0.02%	0.05%	0.10%
Germination	None	85.00%	85.00%	85.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:582 (November 1982), amended LR 9:203 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2728 (October 2013).

§757. Sorghum Seed Certification Standards (Formerly §185)

A. Field Standards

Factor	Foundation	Registered	Certified
*Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	1,300 ft.	1,300 ft.	1,300 ft.
Other Varieties	None	1 Head per 5 Acres	1 Head per 2 Acres
Head Smut	None	1 Head per Acre	1 Head per Acre
Kernel Smut	None	None	1 Head per 2,500 Heads
*No field will be eligible for certification if it grew sudan grass, broomcorn, or sorghum of another variety the previous year.			

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Varieties	None	None	9 seed/lb.
Other Crops	None	5 seed/lb.	5 seed/lb.
Noxious Weeds	None	None	None
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:583 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2729 (October 2013).

§759. Soybean Seed Certification Standards (Formerly §201)

A. Field Standards

Factor	Breeder	Foundation	Registered	Certified
*Land Requirement	1 yr.	1 yr.	1 yr.	1 yr.
Isolation		10 ft.	10 ft.	10 ft.
Other Varieties	None	None	3 Plants per Acre	10 Plants per Acre
Noxious Weeds: Purple Moonflower (Ipomoea turbinata)	None	None	2 Plants per Acre	5 Plants per Acre
Balloonvine (Cardiospermum halicacabum)	None	None	None	None
*Land requirement will be waived if the previous crop was grown from certified seed of the same variety, or of a variety having different plant pubescence or hilum color from the variety to be certified.				

B. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%	2.00%
Other Crops	None	2 seed/lb.	2 seed/lb.	5 seed/lb.
Other Varieties	None	2 seed/lb.	2 seed/lb.	5 seed/lb.
Noxious Weeds	None	None	None	None
Other Weeds	0.05%	10 seed/lb.	10 seed/lb.	10 seed/lb.
Germination	None	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:585 (November 1982), amended LR 9:203 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 15:613 (August 1989), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2729 (October 2013).

§761. Sugarcane (Tissue Culture) Certification Standards (Formerly §203)

A. Limitation of Stand Eligibility

1. Source of foundation stock is limited only to material obtained from the Louisiana State University Agricultural Center (LSUAC) or USDA-ARS Sugarcane Research Unit sugarcane variety selection programs that has been processed through the LSUAC sugarcane quarantine program.

2. Additional propagation of original foundation stock shall be according to procedures determined by the American Sugar Cane League, the Louisiana Department of Agriculture and Forestry, the LSUAC, and the USDA-ARS Sugarcane Research Unit.

3. Source of registered stock is limited to plantlets produced through tissue culture of foundation material or the first ratoon. Stock that meets all standards except insect and/or weeds standards be maintained in the program as seed increase fields only, but may not be marketed to producers. Such stocks are eligible for re-certification once they come in compliance with applicable regulations.

4. Source of certified stock is limited to:
 - a. three consecutive years from planting of registered stock; and
 - b. two consecutive harvests of certified stock.

B. Greenhouse Requirements

1. Foundation plants and plantlets shall be kept in certified greenhouses.
2. Certified greenhouses shall comply with the following requirements:
 - a. all sugarcane plants within the certified greenhouse must have been processed through the LSUAC sugarcane quarantine program;
 - b. greenhouses shall be clearly marked to warn workers that they shall not enter if they are coming from the field or from other non-certified greenhouses;
 - c. doors shall be kept locked when the greenhouse is not in use;
 - d. sticky traps or other monitoring devices shall be used to monitor aphids and other insects;
 - e. screens of such mesh as to prevent entry of aphids and other insects shall be placed over all openings (vents, fans, windows, etc.);
 - f. aphids, whiteflies or other harmful insects shall be controlled within the greenhouse;
 - g. cutting tools shall be decontaminated on a regular basis and always when moving to another group of foundation plants or plantlets;
 - h. different varieties must be clearly identified and separated.

3. Foundation stock shall be tested on a yearly basis for Sugarcane Ratoon Stunting Disease (RSD) and Sugarcane Yellowleaf Virus.

a. Tissue sample testing and protocol shall be provided by the LSU Ag Center Sugarcane Disease Detection Lab. The certifier shall provide to the Louisiana Department of Agriculture and Forestry verification that foundation stock has been tested for Sugarcane Ratoon Stunting Disease (RSD) and Sugarcane Yellowleaf Virus.

4. LDAF must approve greenhouses before foundation plants can be entered into the certification program.

5. Inspections

a. Producer shall inspect and/or sample the greenhouse on a regular basis for harmful diseases and insects. If symptomatic plants are found either visually or by sample test results, they will be removed and destroyed. The grower will keep a log showing that inspections were made and if plants were removed.

b. If problems are observed during these inspections the producer should notify LDAF.

c. LDAF may inspect certified greenhouses several times during the year as needed. If symptomatic plants are found during these inspections they must be rogued and disposed of properly.

C. Field Inspections and Sampling

1. At least three field inspections by Louisiana Department of Agriculture and Forestry inspectors shall be made each year to determine if certified seedcane is being produced that apparently meets field standards.

2. The second inspection to be conducted in June by Louisiana Department of Agriculture and Forestry inspectors will include the collection of leaf samples for the detection of Sugarcane Yellow Leaf Virus.

3. Individual fields shall be sampled by Louisiana Department of Agriculture and Forestry inspectors for the detection of Sugarcane Yellow Leaf Virus according to the following guidelines.

Field Size in Acres	# Leaf Tissue Samples per Field
Less than 5 Acres *	25
5 - 10 Acres	50
Greater than 10 Acres	75

*Minimum of 25 Leaf Tissue Samples per Field

4. Tissue samples shall be submitted to the LSU Ag Center Sugarcane Disease Detection Lab for analysis.

5. The department shall have the right to re-inspect, re-sample and re-test fields that are out of tolerance for Sugarcane Yellow Leaf Virus prior to certification.

D. Land Requirements. The land shall be fallowed one summer from the previous crop.

E. Field Standards

Factor	Foundation	Registered	Certified
Isolation	10 ft.	10 ft.	10 ft.
Other Varieties (obvious)	None	1.00%	1.00%
Off-Type (definite)	None	1.00%	1.00%
Noxious Weeds:			
Johnsongrass	None	5 Plants/Acre	5 Plants/Acre
Itchgrass	None	1 Plant/Acre	1 Plant/Acre
Other Weeds:			
Browntop panicum (Panicum fasciculatum)	None	20 Plants/Acre	20 Plants/Acre
Harmful Diseases:			
*Sugarcane Yellow Leaf Virus	None	10.00%	10.00%
** Sugarcane Mosaic Virus	None	10.00%	10.00%
** Sugarcane Smut	None	0.50%	0.50%
Harmful Insects:			
Mexican Rice Borer	None	None	None
***Sugarcane Borer	None	5.00%	5.00%
*Determined by lab analysis for the LSU Sugarcane Disease Detection Lab			
**Plants exhibiting symptoms			
***Determined by percentage of internodes bored			

F. Stock Handling

1. General Requirements

a. During harvest, constant care should be taken in the handling of certified seed to ensure genetic identity and purity.

b. Stock shall be labeled or identified in a manner such as to represent a lot or field.

c. Planting stock shall be subject to inspection by the Louisiana Department of Agriculture and Forestry at any time during the harvest season.

G. Reporting System

1. No certified seed tags will be issued for certified sugarcane stock.

2. The certifier shall be furnished certification forms by the Louisiana Department of Agriculture and Forestry and shall:

a. issue a copy of the certification form to the purchaser for each load;

b. send a copy of each issued certification form to the Louisiana Department of Agriculture and Forestry within 10 days after each sale; and

c. maintain a copy of each issued certification form on file, which shall be available for examination by the Louisiana Department of Agriculture and Forestry upon request.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 23:1284 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Seed Commission, LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:1609 (August 2007), LR 36:1223 (June 2010), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2729 (October 2013).

§763. Sunflower Seed Certification Standards (Formerly §207)

A. Field Inspections. Two inspections shall be made of the growing crop, the first at early blooming stage and the second just before harvest. Only one inspection shall be required in the case of open-pollinated varieties.

B. Field Standards

1. Sunflower seed grown for certification shall not be on land that was planted the previous year to sunflower of another variety.

2. The isolation distance between varieties for all classes shall be at least 2,640 feet.

3. Flowering. In a crossing field for the production of hybrid sunflower seeds, the male parent must be in bloom and producing pollen at the time the female parent is in bloom. If the female sunflower heads produce pollen before the male parent heads, then the female pollen must be removed to prevent cross-pollination.

4. Maximum Impurity Tolerances (maximum limits per 1,000 plants)

Hybrid Production Foundation and Certified	Female Seed Parent	Male Pollinating Parent
Maximum (including Off-Types)	1	1
Wild-Type Branching	1	1
Purple Plants	1	1
White Seeded	1	0
Obvious Off-Types	4	4

C. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	99.00%	99.00%	98.00%
Inert Matter	1.00%	1.00%	2.00%
Other Crops	None	None	1 seed/lb.
Other Varieties	1 seed/lb.	1 seed/lb.	1 seed/lb.
Weed Seeds	None	None	None
Germination	90.00%	90.00%	90.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:586 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental

Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2731 (October 2013).

§765 - §779. Reserved

Subchapter C. Fruits and Vegetables

§781. Okra Seed Certification Standards (Formerly §179)

A. Field Standards

Factor	Foundation	Registered	Certified
*Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	1,320 ft.	1,320 ft.	825 ft.
Other Varieties	None	None	1 per 1,250 Plants
Off-Type Plants	None	1.25%	1.25%

*Requirement can be waived if previous crop was grown from certified seed of the same variety.

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Varieties	None	None	None
Other Crops	None	5 seed/lb.	10 seed/lb.
Noxious Weeds	None	None	None
Other Weeds	5 seed/lb.	5 seed/lb.	5 seed/lb.
Germination	75.00%	75.00%	75.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:575 (November 1982), amended LR 9:200 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 15:613 (August 1989), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2731 (October 2013).

§783. Onion Bulb Seed Certification Standards (Formerly §181)

A. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	5,280 ft.	2,640 ft.	1,320 ft.
Varietal Mixtures and Off-Type Plants	0.50%	0.50%	0.50%
Diseases:			
Onion Mosaic	1.00%	1.00%	1.00%
Pink Root	10.00%	10.00%	10.00%
Onion Smut	2.00%	2.00%	2.00%
Mildew	5.00%	5.00%	5.00%

B. Field Inspections. Two field inspections shall be made, one after seed heads are formed and one at harvest.

C. Handling and Storage of Bulbs

1. Bulbs must be inspected once at harvest and once in a storage house prior to planting, except that when a grower follows a seed-to-seed system, no bulb inspection shall be necessary.

2. Bulbs of any class must be free from decay; uniform in size, shape, and color; and not to exceed one-half of 1 percent varietal mixture.

D. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	99.50%	99.50%	98.00%
Inert Matter	0.50%	0.50%	2.00%
Other Varieties	None	None	None
Other Crops	0.20%	0.20%	0.20%
Noxious Weeds	None	None	None
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:575 (November 1982), amended LR 9:200 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 15:613 (August 1989), LR 23:1284 (October 1997), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2731 (October 2013).

§785. Shallot Seed Certification Standards (Formerly §197)

A. Land Requirement. The unit of certification shall be a field, which must be at least 300 feet from garlic, onions, or uncertified shallots and shall not have been planted to shallots for two previous years.

B. Field Inspections. Three or more inspections shall be made of the shallots while growing.

1. The first inspection shall be in the seed bed, between November 15 and December 15. On first inspection, more than 5 percent severe yellow dwarf shall cause the shallots in the entire plot to be ineligible for certification.

2. The second inspection shall be after transplanting, during March or April. On second inspection, yellow dwarf infection shall not exceed 1 percent in any area of a unit plot.

3. The third inspection shall be just prior to or at harvest time, generally around May 1 through May 15. A field having in excess of 3 percent plants or irregular growth and maturity and/or more than 3 percent pink root infection shall be ineligible for certification.

C. Storage Requirements

1. There shall be at least one inspection of the seed while in storage between June 15 and July 15.

2. The identity of shallot seed produced in each unit plot must be maintained by the grower.

3. Shallot seed with more than 3 percent storage rot and/or pink root infection shall not be eligible for certification.

4. Seed severely infested with bulb mites shall not be eligible for certification. Seed lightly infested with bulb mites must be treated in a manner prescribed by the Department of Agriculture and Forestry before certified permit tags will be issued.

D. Use of Certified Tags for Shallots. Shallot certificate permit tags shall be valid only during the season (June 1 of one year through May 31 of the succeeding year) in which issued and shall be invalid after being used one time only.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:583 (November 1982), amended LR 9:197 (April 1983), amended by the Department of

Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2732 (October 2013).

§787. Singletary Pea Seed Certification Standards (Formerly §199)

A. Field Standards

Factor	Foundation	Registered	Certified
*Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	12 ft.	12 ft.	12 ft.
Other Varieties	3 Plants per Acre	3 Plants per Acre	6 Plants per Acre
*Land must be free from vetch.			

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	97.00%	97.00%	97.00%
Inert Matter	3.00%	3.00%	3.00%
Other Crops	2 seed/lb.	2 seed/lb.	3 seed/lb.
Other Varieties	2 seed/lb.	2 seed/lb.	5 seed/lb.
Noxious Weeds	None	None	None
Other Weeds	10 seed/lb.	10 seed/lb.	10 seed/lb.
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:583 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2732 (October 2013).

§789. Southern Field Pea (Cowpea) Seed Certification Standards (Formerly §205)

A. Field Standards

Factor	Breeder	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.	1 yr.
Isolation	None	10 ft.	10 ft.	10 ft.
Other Varieties and Off-type Plants	None	3 plants per acre	3 plants per acre	3 plants per acre

B. Seed Standards

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	99.00%	98.00%	98.00%	98.00%
Inert Matter	1.00%	2.00%	2.00%	2.00%
Other Crops	None	None	None	1 seed/lb.
Other Varieties	None	None	None	1 seed/lb.
Noxious Weeds	None	None	None	None
Other Weeds	None	None	None	1 seed/lb.
Germination	80.00%	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:585 (November 1982), amended LR 9:204 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR

23:1284 (October 1997), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2732 (October 2013).

§791. Tomato Seed Certification Standards (Formerly §213)

A. Inspections

1. At least two field inspections shall be made.
2. One inspection shall be made when crop is at or near full fruit.

B. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	2 yrs.	2 yrs.	2 yrs.
Isolation	200 ft.	100 ft.	30 ft.
Other Varieties and Off-type Plants	None	0.05%	0.10%
Tomato Mosaic Virus	0.20%	0.20%	0.50%
Bacterial Spot	0.50%	1.00%	1.00%
Bacterial Speck	0.50%	1.00%	1.00%
Bacterial Canker	None	None	0.10%
Early Blight	0.50%	1.00%	1.00%
Phytophthora Foot Rot	1.00%	1.00%	1.00%
Septoria Foliage Blight	0.50%	1.00%	1.00%
Nailhead Spot	0.50%	1.00%	1.00%
Phoma Rot	0.50%	1.00%	1.00%
Fusarium Wilt	1.00%	1.00%	1.00%
Late Blight	1.00%	1.00%	1.00%

C. Management. Fields designated for production of any certified class of seed shall have no fruits removed for marketing purposes.

D. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	99.00%	98.00%	98.00%
Inert Matter	1.00%	2.00%	2.00%
Other Crops	None	None	0.01%
Other Varieties	None	0.10%	0.20%
Noxious Weeds	None	None	None
Other Weeds	None	0.01%	0.03%
Germination	75.00%	75.00%	75.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Seed Commission, LR 14:604 (September 1988), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2733 (October 2013).

§793. Watermelon Seed Certification Standards (Formerly §217)

A. Field Inspection

1. The initial inspection will be made before the first blooms are open. At this time, volunteer plants and citron must be removed from the field to be certified and the isolation zone by the grower.

2. The second inspection will be made when the melons are ready to harvest. The presence of any citron plants within 2,640 feet of a unit entered for foundation or registered classes or within 1,320 feet of a unit entered for certified class will disqualify the unit for certification.

B. Field Standards

Factor	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	2,640 ft.	2,640 ft.	1,320 ft.
At Harvest Time:			
Citron	None	None	None
White Heart Fruits	None	2.00%	5.00%
Total Off-Type Plants or Varietal Mixtures	None	None	2 Plants per Acre
*Plants Free from Fusarium Wilt	93.00%	93.00%	90.00%
Plants Free from Anthracnose	95.00%	95.00%	90.00%
*Applies to wilt-resistant varieties only			

C. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Crops	None	2 seed/lb.	5 seed/lb.
Other Varieties	None	None	4 seed/lb.
Citron	None	None	None
Weed Seeds	None	None	0.05%
Germination	80.00%	80.00%	80.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:588 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2733 (October 2013).

§795 - 809. Reserved

Subchapter D. Tree Seed

§811. Tree Seed Certification Standards (Formerly §215)

A. Classes of Seed

1. Only the following classes of tree seed shall be recognized in tree seed certification:

- a. certified (blue tag);
- b. selected (green tag); and
- c. source-identified (yellow tag).

2. For all classes of forest tree seed, the exact geographic source of the parent trees and the stand must be known. Location of the source shall be given at least down to the section or comparable land survey unit. (Alternatively, in the case of seed from seed orchards containing selected stocks from a number of separate sections, the location of the orchard shall be given and the exact source of its individual components shall be kept on file and furnished on request.)

B. Land Requirements. Elevation to the nearest 500 feet of the original geographic source and the average height and age of the trees from which seed has been collected shall be shown on the tag for all forest tree seed. If available, site index (the capacity of a given site to produce trees as measured by the height of the trees at a specified age) may be recorded instead of tree height and age.

C. Field Inspection. A field inspection must be made prior to flowering.

D. Field Standards

1. Unit of Certification. An individual tree, clone or stand of trees may be certified in producing certified or selected seed.

2. Isolation. For certified or selected seed, an adequate isolation zone shall be maintained free of off-type plants and other species which might crosspollinate producing trees. There shall be no isolation requirements for source-identified trees.

3. Progeny Testing. All clones used in seed orchards shall be progeny tested.

E. Seed Standards

Factor	Certified	Select	Source Identified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Species	0.01%	0.01%	0.50%
Germination	85.00%	85.00%	85.00%

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:587 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2733 (October 2013).

Chapter 9. Approved Plant Breeders

§901. Authority (Formerly §223)

A. In accordance with the provisions of Part I of Chapter II of Title 3 of the Louisiana Revised Statutes of 1950, the following qualifications herein are prescribed for approving plant breeders for growing and/or supervising the growing of breeder, foundation and/or registered agricultural seeds.

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

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2734 (October 2013).

§903. Definition of Terms Used (Formerly §225)

Agricultural Seeds—the seeds and/or propagation materials of grain, forage, cereal, fibre and nut crops and any other crops commonly recognized within the state as horticultural and agricultural field crops.

Approved Plant Breeder—a person qualified in accordance with the requirements set forth herein and approved by the commission.

Breeder Seed—the limited amount of seed used by the plant breeder in actually breeding or maintaining a strain or variety. Breeder seed is always under the direct supervision and control of the plant breeder and is never available for sale and use by the general public. Breeder seed is used for the production of foundation seed. Breeder seed must be tagged with a tag labeled Breeder Seed.

Certificate—an official document signed by the commissioner certifying that the holder is an approved plant breeder.

Commission—the Seed Commission as created in R.S. 3:14.32.

Commissioner—the Commissioner of Agriculture and Forestry of the State of Louisiana.

Entomologist—the entomologist of the Louisiana Department of Agriculture and Forestry.

Foundation Seed—the first generation progeny from breeder seed that has been tested for at least three years by the Louisiana Experiment Station, or similar institutions in other states and has proven its merit and has been released for commercial use.

Registered Seed—the first generation progeny from foundation seed that is so handled as to maintain satisfactory genetic identity and purity and has been approved and certified by the certifying agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated LR 39:2734 (October 2013).

§905. Professional Services for which an Approved Plant Breeder is Required (Formerly §227)

A. The supervision of an approved plant breeder is required for the growing of breeder seed according to the requirements of the rules and regulations of the Association of Seed Certifying Agencies.

B. Any individual, firm or corporation desiring to be granted the status of a commercial plant breeding firm must submit to the Louisiana Seed Commission a general outline of their proposed methods of seed production for the breeder class of seed. This outline of methods of production must be approved by the Louisiana Seed Commission. This firm must also have an approved plant breeder who has qualified under §907 of these regulations. Production of all breeder seed must be under the direct and active supervision of the plant breeder. This firm's complete plant breeding and seed increase setup must be open to inspection by personnel of the state seed certifying agency.

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

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2734 (October 2013).

§907. Qualifications for Approved Plant Breeders (Formerly §229)

A. To be recognized officially by the Louisiana Department of Agriculture and Forestry as an approved plant breeder, a person must either:

1. hold an advanced degree with plant breeding as a major subject;

2. hold an advanced degree in agronomy or horticulture and show evidence of having at least one year's experience assisting a plant breeder at an experiment station or private seed farm;

3. hold a bachelor's degree in agronomy or horticulture with at least one course in plant breeding and show evidence of at least two years' experience as in Paragraph 2;

4. hold a bachelor's degree in general agriculture, but not qualified under either Paragraphs 1, 2 or 3 above, must pass an examination at the direction of the state entomologist to indicate his knowledge of the subject (especially developing new varieties, variety testing, and increasing pure seed) and must show evidence of two years' experience as under Paragraph 2 (applicants qualifying under this Subsection may supervise the production of the class registered seed only); or

5. must show evidence of competence in the form of the development of a distinct new variety of a crop and produced pure seed of it meeting the requirements for breeder seed. (The person may supervise the production of breeder and/or foundation and/or registered only of the crop variety or varieties developed by him.)

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

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2734 (October 2013).

§909. Conditions Governing the Approval of Plant Breeders (Formerly §231)

A. Persons desiring to obtain a certificate as an approved plant breeder shall make application to the commission on a form supplied by the state entomologist.

B. Applicants must qualify under the eligibility requirements set forth in §907.

C. Applicants for a certificate qualifying under Paragraphs 1, 2, 3 and 4 of §907 shall supply with their application a copy of his college or university transcript; and in the cases of Paragraphs 2, 3 and 4, affidavits supporting the experience requirements indicated under Paragraph 2; and under Paragraph 5, supply affidavits and/or other documentary evidence supporting the requirements set forth herein.

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

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2735 (October 2013).

§911. Plant Breeder Examination (Formerly §233)

A. Applicants to qualify for certification as plant breeders under §907.A.4, must pass a satisfactory examination, which may be either written or oral, or both, on

the principles of plant breeding with special emphasis on the development of new varieties or strains of horticultural and agricultural crops and the handling of them thereafter.

B. Examinations will be given by the state entomologist, or his designee, in his office in Baton Rouge, 10 days or later, at the convenience of the applicant, after the application has been approved by the commission.

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

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2735 (October 2013).

§913. Issuance and Duration of Certificates (Formerly §235)

A. The issuance of certificates of approved plant breeders shall be by the commission after reviewing evidence of the commissioner that the requirements set forth in §909 have been complied with, or by the commissioner with the approval of the commission.

B. Certificates of recognition of plant breeders shall be valid indefinitely, but may be canceled at any time for cause.

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

HISTORICAL NOTE: Adopted by the Department of Agriculture, Seed Commission August 1961, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2735 (October 2013).

Chapter 11. Adulterated Seed Stock and other Propagating Stock

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

§1101. Planting of Rice Seed Stock with LL Traits (Formerly §301)

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:2592 ((December 2007), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2735 (October 2013).

§1103. Planting of all Rice Seed Stocks (Formerly §303)

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:2592 ((December 2007), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2735 (October 2013).

§1105. Sampling of Rice Seed Stock to Detect LL Traits (Formerly §305)

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:2592 ((December 2007), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2736 (October 2013).

§1107. Rice Seed Stock Originating from Out-of-State (Formerly §307)

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:2592 ((December 2007), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2736 (October 2013).

§1109. Carry-Over Rice Seed Stock (Formerly §309)

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:2592 ((December 2007), repromulgated by the Department of Agriculture and Forestry,

Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2736 (October 2013).

§1111. Stop-Sale (Formerly §311)

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:2593 ((December 2007), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2736 (October 2013).

§1113 - §1119. Reserved

Mike Strain, DVM
Commissioner

1310#037

RULE

**Department of Children and Family Services
Economic Stability Section**

Child Care Assistance Program (LAC 67:III.5107)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) has amended LAC 67:III, Subpart 12, Chapter 51, Section 5107, Child Care Providers, to support Act 3 which was enacted during the 2012 Regular Legislative Session.

Act 3 of the 2012 Regular Legislative Session established the Early Childhood Care and Education Network to manage and oversee all publicly-funded programs that provide early childhood care or educational programs to children from birth to age five. It requires the Board of Elementary and Secondary Education, by the beginning of the 2015-2016 school year, to establish and implement the tiered kindergarten readiness improvement system (TKRIS) to establish common standards of kindergarten readiness, assess and provide information regarding the quality of early child care and education programs, and provide resources to support improvements in such programs. An initial phase to comply with these requirements is the development of community network pilots throughout the state. Quality incentive bonuses will support these initiatives.

Section 5107 has been amended to provide for quality incentive bonuses to eligible child care assistance program (CCAP) providers that voluntarily participate in the Louisiana Department of Education community network pilots with 3-5 stars in quality start child care rating system and who are caring for CCAP-eligible children birth to five years effective July 1, 2013-June 30, 2014.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self Sufficiency

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter B. Child Care Providers

§5107. Child Care Providers

A. - G.2. ...

H.1. Quality incentive bonuses are available to:

a. - c. ...

d. eligible CCAP providers who are voluntarily participating in the Louisiana Department of Education community network pilots effective July 1, 2013-June 30, 2014 with 3-5 stars in the quality start child care rating system who are caring for CCAP-eligible children birth to five years, as part of the implementation of Act 3 of the 2012 Legislature.

H.2. - I.3 ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:845 (April 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR:36:2535 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3490 (December 2011), LR 39:2737 (October 2013).

Suzy Sonnier
Secretary

1310#087

RULE

**Office of the Governor
Board of Architectural Examiners**

Architect Emeritus (LAC 46:I.1539)

Under the provisions of R.S. 49:950 et seq., and through the authority granted in R.S. 37:144(C), the Board of Architectural Examiners adopts LAC 46:I.1539 to provide concerning the title which an architect who has been granted emeritus status may use in Louisiana. The existing board rules do not provide concerning such title.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part I. Architects

Chapter 15. Titles, Firm Names, and Assumed Names

§1539. Architect Emeritus

A. An architect who has received emeritus status from the board pursuant to §1105.E should use the title "architect emeritus."

Allowed	Not Allowed
John Smith, Architect Emeritus (if John Smith has received emeritus status from the board pursuant to Rule §1105.E)	John Smith, Architect (if John Smith has received emeritus status from the board pursuant to Rule §1105.E)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 39:2737 (October 2013).

Mary "Teeny" Simmons
Executive Director

1310#006

RULE

**Office of the Governor
Board of Architectural Examiners**

Individuals Registered in Other States and
Military-Trained Architects and Architect Spouses of
Military Personnel (LAC 46:I.1103 and 1109)

Under the provisions of R.S. 49:950 et seq., and through the authority granted in R.S. 37:144(C), the Board of Architectural Examiners amends LAC 46:I.1103.A and adopts LAC 46:I.1109 to provide procedures for the licensing of military-trained architects and architect spouses of military personnel. The existing rule, §1103.A, currently provides that the exclusive means for an individual registered in another state who seeks to be registered in Louisiana is the submission to the board of an NCARB (blue cover) certificate. During the 2012 Legislative Session, the legislature enacted Act 276 of 2012 (R.S. 37:3651), which provides a method for the licensing of military-trained applicants and spouses of military personnel. Act 276 of 2012 mandates that professional licensing boards adopt rules implementing its provisions, and the rules do so.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part I. Architects

Chapter 11. Certificates

§1103. Individuals Registered in Other States

A. The exclusive means for an individual registered in another state(s) seeking to be registered in Louisiana is the submission to the board of an NCARB (blue cover) certificate, except in the cases of military-trained architect applicants or architect spouses of military personnel who satisfy the requirements of R.S. 37:3651 and in §1109 below.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:563 (April 2003), amended LR 39:2737 (October 2013).

**§1109. Military-trained Architects and Architect
Spouses of Military Personnel**

A. A military-trained applicant who demonstrates all of the following to the satisfaction of the board and pays the fee applicable to all applicants seeking initial licensure shall be

granted registration and a license to practice architecture in Louisiana:

1.a. if while in active United States military service, the applicant completed and passed a program of training in architecture conducted by a branch of the United States military, was awarded a military occupational specialty in architecture, and thereafter satisfactorily practiced architecture at a level that was substantially equivalent to or exceeded the education, examination and training requirements of R.S. 37:146 and these rules for licensure as an architect;

b. the applicant engaged in the active practice of architecture;

c. the applicant has not been disciplined by any military branch or any jurisdiction for any act that would have constituted grounds for refusal, suspension, or revocation of a license to practice architecture in this state at the time the act was committed; and

d. the applicant has not received a dishonorable discharge from the military;

2.a. to demonstrate the above requirements, the applicant shall furnish to the board:

i. official military documents describing the content and nature of the military training program in architecture and evidence of the applicant completing and passing such program;

ii. official military documents describing the military service requirements which must be met to be awarded a military occupational specialty in architecture sufficient for the board to assess the equivalence of such requirements to the licensure requirements of Louisiana;

iii. sworn statement or statements by superior officers of the applicant attesting that the applicant has satisfactorily engaged in the active practice of architecture in the military;

iv. official military or other documents demonstrating that the applicant has not been disciplined by any military branch or any jurisdiction for any act that would have constituted grounds for refusal, suspension, or revocation of a license to practice architecture in Louisiana; and

v. official military documents showing that the applicant received an honorable discharge from the military.

(a). The board may request additional information.

B. A military-trained applicant who meets the requirements set forth in Subparagraphs 1109.A.1.a-d above to the satisfaction of the board and pays the fee applicable to all applicants seeking initial licensure shall be granted registration and a license to practice architecture in this state if the applicant holds a current license in good standing to practice architecture in any other United States jurisdiction and the requirements for licensure of that jurisdiction at the time the applicant was licensed are substantially equivalent to or exceed the requirements for licensure, certification, or registration in Louisiana.

C. An applicant who is a military spouse and who demonstrates all of the following to the satisfaction of the board and pays the fee applicable to all applicants seeking initial licensure shall be granted registration and a license to practice architecture in this state:

1.a. the military spouse holds a current license in good standing to practice architecture in any other United States jurisdiction and the requirements of that jurisdiction for licensure are substantially equivalent to or exceed the requirements for licensure in the state at the time the applicant was licensed;

b. the military spouse demonstrates competence in the practice of architecture, such as having completed continuing education units or recent experience;

c. the military spouse has not been disciplined by any jurisdiction for any act that would constitute grounds for refusal, suspension or revocation of a license to practice architecture in this state at the time the act was committed; and

d. the military spouse is in good standing and has not been disciplined by the jurisdiction or agency that issued the license to the military spouse.

2. a military spouse is a person wed to an individual who has not been dishonorably discharged and who is serving on active duty in a branch of the United States military at the time the spouse applies to the board for licensure.

D. A military-trained applicant appearing to the board to meet the requirements set forth in Subsection 1109.B above and a military spouse appearing to the board to meet the requirements of Subsection 1109.C above shall be issued a temporary practice permit allowing such applicant to practice architecture pending completion of the board's receipt and action upon all appropriate documentation supporting such application, which board action may include the granting or denial of licensure or a request for additional information concerning such application. Any such temporary practice permit shall only permit the applicant to practice architecture in Louisiana in accordance with all applicable laws and these rules, and the applicant shall be subject to all of the requirements of a fully licensed architect in connection with such practice including the requirements to pay all fees and to conform to all laws and rules, including the continuing education requirements of these rules. In processing applications for licensure under the provisions of this Section 1109, the board shall accord priority to the holders of temporary practice permits in the priority such temporary practice permits have been granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 39:2737 (October 2013).

Mary "Teeny" Simmons
Executive Director

1310#005

RULE
Office of the Governor
Cemetery Board

Cemetery Industry (LAC 46:XIII.Chapters 1-25)

The Office of the Governor, Louisiana Cemetery Board, has adopted LAC 46:XIII.101 et seq., as authorized by R.S. 8:67. These rules are promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Louisiana Cemetery Board was created by Acts 1974, No. 417. The majority of the rules adopted pursuant to Acts 1974, No. 417, were promulgated in 1975 and 1982. Thus, the rules did not reflect nearly 30-years-worth of legislative changes and amendments to the Louisiana Cemetery Act. These rules replace the existing rules in their entirety, but retain much of the substance of the original rules. In addition, these rules contain updates to the original rules to reflect legislative enactments and amendments since the original promulgation events in 1975 and 1982. Finally, these rules incorporate existing policies into the rules of the Louisiana Cemetery Board and correct technical and grammatical errors in the original rules.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XIII. Cemetery Industry

Chapter 1. General Provisions

§101. Authority

A. These rules are adopted and promulgated by authority of, and in accordance with, the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Revised Statutes, Title 8, less and except the Louisiana Unmarked Human Burial Sites Preservation Act, as those laws may from time-to-time be amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013).

§103. Definitions

A. There is incorporated herein by reference all of the definitions set forth and contained in R.S. 49:950 et seq., and in Title 8, Louisiana Revised Statutes. The following words and terms, when used in these rules, shall have the following meanings.

Administrative Procedure Act—R.S. 49:950 et seq., as the same may from time-to-time be amended.

Board—the Louisiana Cemetery Board.

Fair Market Value—the undiscounted price of a comparable cemetery space, right of interment, merchandise, service, or product in the same cemetery.

Gross Sales Price Received—the price of a cemetery space, a right of interment, merchandise, service, or product before the application of any discount, rebate, or promotional offer.

Interment Space—cemetery space as that term is defined in R.S. 8:1.

Located in Louisiana—registered with the Louisiana Secretary of State to do business in Louisiana.

Non-Willful Violation—an unintentional or negligent error resulting in a violation of Title 8 or the rules of the board. A non-willful violation is one that represents a failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstances.

Other Property Used or Intended to be Used for the Interment of Human Remains—shall include, but not be limited to:

- a. cremation benches;
- b. cremation boulders;
- c. memorial niches;
- d. copings; or
- e. other property that encloses or contains human remains.

Presiding Officer—the chair of the Louisiana Cemetery Board or a member of the Louisiana Cemetery Board appointed to preside over a proceeding to be conducted by the board.

Title 8 or Louisiana Cemetery Act—the Louisiana Revised Statutes, Title 8, less and except the Louisiana Unmarked Human Burial Sites Preservation Act, as that law may from time-to-time be amended.

Wholesale Cost—the price, exclusive of any discounts or rebates, paid to a supplier, vendor, or manufacturer for merchandise or personal property.

Willful Violation—a knowing, voluntary, or intentional violation of Title 8 or the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013).

Chapter 3. Organization

§301. Officers of Board

A. The officers of the board shall be a chair, a vice-chair, and a secretary-treasurer. The board may designate and elect such other officers as it shall determine. All officers shall be elected from among the members of the board, and shall perform such duties as shall be prescribed by the board.

B. Officers shall be elected to serve for a period of one year or until their successors are elected. Their term of office shall begin at the close of the meeting at which they are elected.

C. No member shall hold more than one office at a time, except that one member may serve as secretary-treasurer. An officer may serve consecutive terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:64 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013).

§303. Meetings; Quorum

A. Regular meetings of the board shall be held at least twice a year, at such times and places as shall be determined by the board. Special meetings may be called by the chair or the board's designee and shall be called upon the written request of any three members of the board.

B. Written notice of all meetings shall be sent by the secretary or the board's designee to each member of the board.

C. Four members of the board shall constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:65 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013).

§305. Committees

A. The executive committee shall consist of the officers of the board.

B. There shall be the following standing committees:

1. examination and inspection committee;
2. rules committee;
3. consumer complaints committee.

C. Such other committees, standing or special, shall be appointed by the board or by the chair of the board, as the board or the chair shall from time to time deem necessary to carry on the work of the board. All appointments to committees, standing or special, other than the executive committee, shall be made by the chair. The chair shall be an ex officio member of all committees, and as such, he shall have the same rights as the other committee members, including the right to vote, but he shall not be counted in determining whether a quorum is present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§307. Parliamentary Authority; Order of Business

A. The rules contained in the current edition of *Roberts Rules of Order* shall govern the conduct of the board meetings and proceedings. The board may vary, modify, or deviate from such rules of order whenever it shall deem it necessary or advisable to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§309. Computation of Time

A. In computing a period of time allowed or prescribed by these rules, by law or by order of the board, the date of the act, event or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday or a day of the weekend, in which event the period runs until the end of the next day which is not a legal holiday or a day of the weekend.

B. A half-holiday is considered as a legal holiday. A legal holiday or day of the weekend is to be included in the computation of a period of time allowed or prescribed, except when:

1. it is expressly excluded;
2. it would otherwise be the last day of the period; or
3. the period is less than seven days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§311. Amendment of Rules

A. These rules may be amended, and any such amendments shall become effective, in accordance with and as provided by the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§313. Appearances

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§315. Formal Requirements for Pleadings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§317. Statutory References in Pleadings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 69.1, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§319. Ex Parte or Emergency Relief

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

Chapter 5. Rulemaking Procedure

§501. Proceedings by the Board

A. The board may initiate proceedings for the promulgation, amendment, or repeal of any rule. Such proceedings shall be conducted in accordance with the Administrative Procedure Act.

B. The board will maintain a list of persons who have made timely requests for advance notice of its rulemaking proceedings, and will give notice to such persons by certified mail pursuant to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Louisiana Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§503. Initiation of Proceedings by Interested Persons

A. Any interested person may petition the board requesting the adoption, promulgation, amendment, or repeal of a rule. The petition shall be filed by mailing same to the board at its administrative office in the parish of Jefferson.

B. A petition filed in accordance with this Section shall contain the following:

1. the names and addresses of the petitioners;
2. the names and addresses of the attorneys, if any, of petitioners;
3. all pertinent allegations of fact, views, arguments and reasons supporting the action sought by the petition;
4. a statement or prayer expressing the action sought by the petition.

C. After submission of a petition under this Chapter 5, the board shall either deny the petition in writing, stating the reasons for the denial, or shall initiate rulemaking proceedings, in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

Chapter 7. Certificate or License

§701. Applications

A. All applications for any certificate of authority or license shall be submitted to and filed with the board at its administrative office in the parish of Jefferson, and must be accompanied by the charge, fee, or other sum provided for in the Louisiana Cemetery Act. Payment of such charge, fee, or other sum shall be by check or money order made payable to the Louisiana Cemetery Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013).

§703. Application for Exempt Status

A. Each cemetery authority or person seeking an exemption under R.S. 8:78 shall make an application in the manner prescribed by the board. Such application shall include a complete explanation justifying the exemption.

B. Upon the board's determination that a cemetery authority or person meets the qualifications for an exemption, the board may issue an exempt certificate of authority to said cemetery upon completion of an application and the submission of required documentation, as required by the board.

C. Every cemetery authority and every person who has been determined by the board to be exempt shall immediately notify the board of any change of fact, circumstance, condition, status, or mode of operation which might affect the board's determination. The board may, from time to time, require submission of such information as it may deem necessary to determine if a cemetery authority or person continues to meet the qualifications for an exemption. If the board determines that a previously-exempt cemetery authority or person no longer meets the qualifications for such an exemption, such cemetery authority or person shall immediately begin the process of applying for a certificate of authority.

D. If a cemetery authority or person is determined to be exempt, the cemetery authority or person must, nonetheless, comply with all applicable provisions of Title 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013).

§705. Forms and Instructions

[Formerly §703]

A. The applicant shall prepare and file all applications on the forms prescribed by the board and in accordance with the instructions issued by the board.

B. The forms and instructions shall be prescribed by the board and shall contain such instructions and require such information as the board may find useful.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013).

§707. Other Provisions Concerning Certificate or License

[Formerly §705]

A. A certificate of authority or license shall be valid for the period of time stated thereon unless it shall have been sooner suspended or revoked. Each certificate of authority for the operation of a cemetery must be displayed on the premises of the cemetery authority, and each license for the conduct of other businesses shall be exhibited on reasonable request.

B. A certificate of authority or license provided for by the Louisiana Cemetery Act shall be nontransferable.

C. Prior to the issuance of a certificate of authority to a newly established cemetery the board may require the submission of minimum development plans, including, but not limited to, maps and plats and a development schedule for any roads and non-interment structures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013).

§709. Refusal to Grant or Renew Certificate of Authority or License

[Formerly §707]

A. If the board refuses to grant or renew any certificate of authority, it shall give the applicant written notice of its decision, with the reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding. If no such proceeding is initiated, the action of the board shall be final.

B. If the board refuses to renew any license to engage in the business of a cemetery sales organization or a cemetery management organization, it shall give the applicant written notice of its decision, with the reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding. If no such proceeding is initiated, the action of the board shall be final.

C. The board may require the applicant to pay the costs of the adjudication proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013).

§711. Revocation or Suspension of Certificate of Authority

[Formerly §709]

A. Upon receipt of information that may constitute grounds for revocation, suspension, annulment, or withdrawal of a certificate of authority, the board shall comply with the provisions of Title 8, Administrative Procedure Act, and these rules regarding the revocation, suspension, annulment, or withdrawal of any certificate of authority, and particularly but without limitation, R.S. 49:961.

B. A holder of a certificate of authority shall have 30 days from receipt of the notice required by R.S. 49:961(C) in which to show compliance with all lawful requirements for the certificate of authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

Chapter 9. Cemetery Records and Documents

§901. Records Required to be Maintained

A. Every cemetery or cemetery authority, whether holding a certificate of authority or not, shall maintain accurate, complete, and legible records of any books, contracts, records, or documents pertaining to, prepared in, or generated by, the cemetery including, but not limited to:

1. forms, including, but not limited to:
 - a. contracts and deeds;
 - b. titles; and
 - c. certificates of interment rights;
2. reports;
3. accounting records;
4. ledgers;
5. electronic records;
6. cemetery space ownership records;
7. interment records;
8. maps and plats;
9. current and historic price lists;
10. current and historic rules of the cemetery, if any;
- and
11. trust records.

B. The records referenced in this Section shall be known as “records pertaining to the operation and business of a cemetery.”

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§903. Records to be Transferred

A. Upon the change of ownership or control of a cemetery or cemetery authority, the records referenced in Section 901 shall be provided to the transferee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§905. Access to Records

A. All records pertaining to the operation and business of a cemetery shall be available for inspection by the board at any time during regular business hours. The records shall be

available for inspection at the cemetery or at a location designated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§907. Permanency of Records

A. All records pertaining to the operation and business of a cemetery shall be preserved until the obligation pursuant thereto is fulfilled. Following the fulfillment of any obligation, these records shall be subject to the retention schedule set forth in Subsections B and C of this Section.

B. The following records pertaining to the operation and business of a cemetery shall be permanently preserved:

1. contracts and deeds, titles, and certificates of interment rights;
2. cemetery space ownership records;
3. interment records;
4. maps and plats; and
5. current and past rules and regulations of the cemetery, if any.

C. The following records pertaining to the operation and business of a cemetery shall be preserved for a minimum of seven years, unless otherwise directed by the board:

1. reports;
2. accounting records;
3. trust records;
4. ledgers;
5. electronic records; and
6. current and past price lists.

D. The records required by this Chapter shall be either:

1. in the form of the original record; or
2. electronically, subject to the following requirements:
 - a. any and all electronic records must be able to be easily reproduced in a legible format; and
 - b. any and all electronic records must be accessible for the purposes of examination by the board pursuant to Title 8 and the rules of the board;
 - c. at the request of the board, cemeteries or cemetery authorities maintaining electronic records shall provide, at their expense, hard copies of any records for the board’s examination.

E. All records, including electronic records, pertaining to ownership, interments, maps, and plats shall be adequately protected from destruction by fire in one or more of the following manners:

1. by duplicate records stored at a separate location; or
2. by storing the originals in a fireproof container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§909. Written Contracts Required

A. All contracts for cemetery spaces, interment rights, or cemetery related merchandise and services shall be in writing and written in clear and understandable language. All such contracts shall be sequentially numbered and entered into a sales journal numerically.

B. All contracts under Subsection 909.A shall include the following mandatory information:

1. date of the contract;

2. name of the seller and purchaser;
3. statement that the cemetery is perpetual care, if applicable;
4. the location of the interment space;
5. an itemization of the prices charged, including any applied discounts, for each item provided as part of the contract;
6. the terms under which each contract is to be paid; and
7. the clear terms for cancellation of the agreement and the damages for cancellation, if any.

C. All contracts for cemetery spaces or interment rights shall also include:

1. the cost of the cemetery space or interment right(s);
2. the type of interment to be provided and the number of interments allowed. Nothing in this Section shall be interpreted to limit the ability of a cemetery authority to sell or allow multiple interments, as permitted by the cemetery authority's rules;
3. the amount or percentage to be placed in the cemetery's perpetual or endowed care trust; and
4. a statement regarding whether the payment for the cemetery space(s) or interment right(s) includes or does not include the cost of opening and closing of the cemetery space.

D. All contracts for cemetery related merchandise and services shall also include:

1. the price of each item of merchandise or service contracted for;
2. if the merchandise will not be delivered or stored pursuant to R.S. 8:502.1, then the agreement shall state the amount or percentage to be placed in the cemetery's merchandise trust fund;
3. a description of each item of merchandise or service with sufficient information to describe the merchandise or service, including the size, design, and materials used in construction or manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:206.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§911. Contents of Answer

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§913. Default in Answering or Appearing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§915. Leave to Intervene Necessary

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), repealed

by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§917. Prehearing Conference

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§919. Hearing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§921. Adjudication Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§923. Judicial Review of Adjudication

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§925. Informal Proceedings Authorized

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

Chapter 11. Proceedings other than Rulemaking; General Procedural Rules

§1101. Proceedings by the Board

[Formerly §901]

A. Proceedings initiated by the board, except for the promulgation, amendment or repeal of a rule, shall be commenced by the issuance of an order to show cause directed to the respondent. Such order shall state the acts, conduct, or the failure or omission to act alleged to be contrary to or in violation of any provision of law or of any of the lawful rules, regulations, orders, decisions or opinions issued, rendered and/or promulgated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§1103. Proceedings by Persons other than the Board

[Formerly §903]

A. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, and who is entitled or required by law to do

so shall prepare and file with the board a petition in the form and content as set forth in Subsection 503.B of these rules and including, whenever applicable and possible, particular reference to the statute, rule, regulation, order, decision or opinion involved.

B. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, but who is not entitled or required by law to do so shall prepare and file with the board a petition which shall meet the requirements of Subsection 1103(A). If the board shall determine that the petition is filed in good faith, that the petitioner would be entitled to relief if the allegations of his petition are established and that such allegations otherwise justify the initiation of adjudication proceedings, the board shall initiate adjudication proceedings in accordance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§1105. Notice

[Formerly §905]

A. Upon the issuance of an order to show cause by the board, or upon the initiation of adjudication proceedings pursuant to a petition filed by any person in accordance with these rules, the board shall issue a notice in conformity with the provisions of R.S. 49:955.

B. The hearing set by such notice shall be fixed not less than 20 days from the date of such notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1107. Service of Notice; Pleadings, and other Documents

[Formerly §907]

A. Service of such notice, and of all pleadings, decisions, orders, and other papers and documents shall be made, and shall be deemed valid if made, by delivering one copy to each party or his attorney of record in person or depositing it in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, directed to the party or his attorney of record at his post office address. Service by mail shall be deemed complete at the date of mailing. Notwithstanding the foregoing, the parties may mutually agree to another method of service acceptable under the *Louisiana Code of Civil Procedure*.

B. Unless otherwise provided, when any party has appeared through an attorney, service upon such attorney shall be deemed valid service upon the party until written notice of dismissal of such attorney is received by the board and served on all parties of record to the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1109. Answer or Appearance

[Formerly §909]

A. A respondent may file his answer or other appearance personally or through an attorney not later than five days before the date fixed for the hearing.

B. The filing of an answer or other appearance by an attorney constitutes an appearance by the party for whom the pleading is filed, and also constitutes an appearance of the attorney on behalf of such party. An attorney who has appeared on behalf of a party may withdraw from any proceeding upon good cause shown to the board and upon written notice to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1111. Appearances

[Formerly §313]

A. No person, except an individual appearing on his own behalf or as a representative or witness on behalf of a party, shall be permitted to participate in any proceeding before the board unless such person is represented by an attorney of this state in good standing.

B. Any attorney or counselor from any other jurisdiction, of good standing there, may, at the discretion of the board be admitted, pro hac vice, to associate with an attorney of this state in a proceeding and to participate therein in the same manner as an attorney of this state, provided, however, that all pleadings, briefs, and other papers filed with the board in such matters shall be signed by an attorney authorized to practice in this state who shall be held responsible for them and who shall be present at all times during the proceeding unless excused by the presiding officer.

C. Any person appearing before or transacting business with the board in a representative capacity may be required by the board or the presiding officer to file evidence of his authority to act in such capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1113. Formal Requirements for Pleadings

[Formerly §315]

A. All pleadings shall be printed or typewritten and shall be prepared on either letter size or legal size paper.

B. All pleadings must be signed in ink by the party or attorneys of record, if any.

C. All pleadings initiating a proceeding or otherwise seeking affirmative relief and all petitions of intervention shall be verified, except for those matters initiated or petitions or orders to show cause brought by the board or upon the motion of the attorney general of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1115. Statutory References in Pleadings
[Formerly §317]

A. All pleadings shall cite, by appropriate reference, the statutory provision or other authority under which the board's action is sought, and shall refer to any statutes, rules, regulations, decisions, orders, and/or opinions, germane to the particular matter or proceeding involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

§1117. Ex Parte or Emergency Relief
[Formerly §319]

A. If a petition or other pleading filed by a person other than the board seeks ex parte action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action and must be supported by affidavits to make a prima facie case.

B. The chair may take any such emergency action as they deem appropriate in their sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

§1119. Contents of Answer
[Formerly §911]

A. The answer shall:

1. conform to the requirements for answers under the *Louisiana Code of Civil Procedure*;
2. contain a specific detailed statement of any affirmative defense or matter in extenuation or mitigation;
3. contain a clear and concise statement of the facts and matters of law relied upon constituting the grounds of the defense or the basis for extenuation or mitigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

§1121. Default in Answering or Appearing
[Formerly §913]

A. In the event of the failure of a respondent to answer or otherwise appear within the time allowed, and provided that these rules relative to service and notice have been complied with, such respondent failing to answer or otherwise appear shall be deemed to be in default. At the time fixed for the hearing, the party initiating the proceeding shall present its evidence and in due course, and after due consideration of all of the pleadings, evidence and the entire record, the board shall render its decision or issue its order or ruling, as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

§1123. Leave to Intervene Necessary
[Formerly §915]

A. Persons, other than the original parties to any proceeding, whose interests are to be directly and immediately affected by the proceeding, shall secure an order granting leave to intervene before being allowed to participate, provided that the granting of leave to intervene in any proceeding shall not be construed to be a finding or determination by the board for purposes of judicial review or appeal.

B. A petition for leave to intervene must clearly identify the proceedings in which the intervention is sought, must set forth the name and address of the petitioner for intervention, and must contain a clear and concise statement of the direct and immediate interest of the petitioner in such proceeding, stating the manner in which such petitioner will be affected by such proceeding, outlining the matters and things relied upon by such petitioner as a basis for his request to intervene, and if affirmative relief is sought, the petition must contain a clear and concise statement of the relief sought and the basis thereof.

C. A petition to intervene and adequate proof of service of a copy thereof on all parties of record to the proceeding shall be filed not less than 10 days prior to the commencement of the hearing. For good cause shown, the board shall allow a petition of intervention to be filed not later than the time of the hearing.

1. If such petition to intervene is not filed in accordance with these rules, such petition will not be considered.

2. If a petition to intervene shows direct and immediate interest in the subject matter of the proceeding or any part thereof, and does not unduly broaden the issues, the board may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed.

3. If it appears during the course of a proceeding that an intervenor has no direct or immediate interest in the proceeding, and that the public interest does not require participation by such intervenor therein, the board may dismiss such intervenor from the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

§1125. Prehearing Conference
[Formerly §917]

A. The chair or the chair's appointee may, of their own volition, or upon the motion of any party of record, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, and considering such other matters as may expedite the orderly conduct and disposition of the proceeding, or the settlement thereof.

B. The action taken at such prehearing conference, including without limitation, all the agreements, admissions,

and/or stipulations made by the parties concerned, shall be made a part of the record. Such action shall control the subsequent course of the proceeding, unless otherwise stipulated by all parties of record with the consent of the chair or the chair's appointee.

C. In any proceeding, the chair or the chair's appointee may, in its discretion, call all parties together for a conference prior to the taking of testimony, or may recess a hearing, after it has commenced, for the purpose of holding a conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

§1127. Hearing

[Formerly §919]

A. At the date, time and place fixed for the hearing, the board shall hear all matters presented in connection with the proceeding pending before it. The hearing shall be conducted by the chair or the chair's appointee. The board and all other parties may be represented by counsel.

B. Opportunity shall be afforded all interested persons to respond and present evidence on all issues of fact involved and arguments on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

C. The chair or the chair's appointee conducting any proceeding subject to these rules shall have the power to direct, control and regulate the order, procedure and course of the hearing, including, but not limited to, opening statements, the order and method of presentation of testimony and evidence by all parties, and closing statements. The chair or the chair's appointee shall have the further power to set the time and place for continued or recessed hearings, fix the time for filing of memoranda and other documents, and generally to do all things necessary and proper for the conduct of a full and fair hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1129. Adjudication Procedure

[Formerly §921]

In the conduct of adjudication the board shall conform to and comply with, and shall conduct such adjudication in accordance with, the applicable provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1131. Judicial Review of Adjudication

[Formerly §923]

A. Judicial review of a final decision or order in adjudication proceedings shall be in accordance with, and is governed by, the Administrative Procedure Act.

B. The party seeking such judicial review shall cause to be prepared, and shall transmit to the reviewing court, the original or a certified copy of the entire record of the proceeding under review. All costs of preparing and transmitting the record for review shall be borne by the party prosecuting such appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1133. Informal Proceedings Authorized

[Formerly §925]

A. Nothing in these rules shall be construed as prohibiting the board from holding informal proceedings, hearings, or conferences for the purpose of aiding the board in ascertaining and determining facts necessary for the performance of its duties. Any person who is aggrieved by any action or determination of the board following such an informal proceeding, hearing, or conference, and who is otherwise entitled thereto, may file a petition requesting the promulgation, amendment, or repeal of a rule, or may file a petition to initiate an adjudication proceeding, under applicable provisions of these rules. Such petitions for exercise of the rulemaking process or for adjudication shall be handled by the board de novo.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1135. Fine Schedules for Willful and Nonwillful

Violations of the Louisiana Cemetery Act

A. The board, at its discretion, after notice and hearing as required by the Administrative Procedure Act, and in lieu of a complete suspension or complete revocation of a certificate of authority or a license, may impose fines for violations of Title 8 and the rules of the board according to the following fine schedule.

B. By agreement of the board and a party alleged to have violated the Louisiana Cemetery Act, a hearing pursuant to Title 8 and the Administrative Procedure Act may be waived and the parties may enter into a consent agreement, stipulating to the facts and law applicable to the alleged violation. In the event that such an agreement is reached, the following fine schedule may apply to each of the enumerated violations.

C. Each willful or nonwillful act shall constitute a separate violation for the purposes of imposing the fines set forth in the following schedule.

D. The schedule of fines shall in no event be less than as follows.

1. For each willful violation:

Violation	Minimum fine	Maximum fine
Failure to maintain records pertaining to the operation and business of a cemetery	\$500 per violation	\$10,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$500 per violation (each interment is a violation)	\$10,000 per violation

Violation	Minimum fine	Maximum fine
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$500 per violation	\$10,000 per violation
Failure to timely deliver merchandise or services	\$500 per violation	\$10,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$250 per violation (per day)	\$10,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$50 (per day, per report)	\$10,000 per violation
Failure to timely file application for predevelopment sales projects	\$50 (per day from the date of the first sale within the predevelopment project)	\$10,000 per violation
Failure to timely issue titles or certificates of interment rights	\$25 (per day, per title)	\$10,000 per violation
Failure to timely respond to consumer complaints	\$25 (per day, per complaint)	\$10,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$25 (per day, per examination)	\$10,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$10,000 per violation

2. For each nonwillful violation:

Violation	Minimum fine	Maximum fine
Failure to maintain records pertaining to the operation and business of a cemetery	\$250 per violation	\$1,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$250 per violation (each interment is a violation)	\$1,000 per violation
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$250 per violation	\$1,000 per violation
Failure to timely deliver merchandise or services	\$250 per violation	\$1,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$125 per violation (per day)	\$1,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$25 (per day, per report)	\$1,000 per violation
Failure to timely file application for predevelopment sales projects	\$25 (per day from the date of the first sale within the predevelopment project)	\$1,000 per violation
Failure to timely issue titles or certificates of interment rights	\$15 (per day, per title)	\$1,000 per violation
Failure to timely respond to consumer complaints	\$15 (per day, per complaint)	\$1,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$15 (per day, per examination)	\$1,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$1,000 per violation

E. Nothing in this section shall limit the authority of the board or the attorney general to bring any civil or administrative action for alleged violations not covered by any agreement entered into under this section or for breach of any agreement entered into under this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

Chapter 13. Declaratory Orders and Rulings
§1301. Right to Seek Order or Ruling; Procedure
[Formerly §1101]

A. A request for a declaratory order or ruling on the applicability of any statutory provision or of any rule or order of the board, shall be by petition filed with the board at its administrative office. Such petition shall set forth in clear and concise language all facts, circumstances and relevant information as to the necessity for such declaratory order or ruling, and shall make specific reference to the statutory provision, rule, or order of the board about which the declaratory order or ruling is requested. The petition shall be considered by the board at its next regularly-scheduled meeting, provided that the petition has been filed at least 30 days prior to that meeting.

B. Pending the issuance of the decision by the board, an order may be issued that other proceedings and actions connected with the matter submitted to the board shall be held in abeyance or stayed.

C. The costs incurred by the board in connection with any such request for a declaratory order or ruling are to be solely borne by the petitioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2747 (October 2013).

§1303. Declaratory Judgment for Determining Validity or Applicability of a Rule
[Formerly §1103]

A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the Twenty-Fourth Judicial District Court for the Parish of Jefferson as provided for in the applicable provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2747 (October 2013).

§1305. Informal Opinions
[Formerly §1105]

A. Nothing in these rules shall be construed as prohibiting the board from rendering an informal or advisory opinion to any person on any matter arising out of the administration or enforcement of the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2747 (October 2013).

Chapter 15. Cemetery Care Fund

§1501. Payments to Perpetual Care Trust Fund

[Formerly §1301]

A. After establishment of the perpetual or endowed care trust fund when and as required by Title 8, the amount to be deposited in the trust fund shall be a minimum of 10 percent of the gross sales price received, less sales tax and interest or finance charges, if any, for the sale, transfer, or conveyance of any interment space or interment right.

B. In no event shall the deposit be less than 10 percent of the fair market value of each interment space or right conveyed. Such fair market value shall be the undiscounted price of a comparable right of interment or interment space in the same cemetery, unless otherwise provided in this Rule.

C. In addition to the minimum deposits required, a cemetery may require, within the cemetery's rules, additional deposits to the perpetual or endowed care trust fund. Such additional deposits shall not be withdrawn from the trust fund once deposited.

D. All perpetual or endowed care deposits shall be delivered to the trustee not later than the thirtieth day after the close of the month of the sale or transfer of the interment space or interment right by the cemetery authority or cemetery sales/management organization. However, if the sale or transfer is financed by the seller and payments are pursuant to an installment contract, then the deposits to the trust fund must be made either:

1. not later than the thirtieth day of the close of the month in which the contract is made; or of the close of the month in which the contract is made; or

2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

E. If an installment contract is financed with or sold to a financial institution or entity other than the seller, the contract shall be considered paid in full, both as to time and amount, and the deposits shall be delivered to the trustee not later than the thirtieth day after the end of the calendar month in which the cemetery authority receives the funds.

F. In the event that a contract for a cemetery space or interment right is cancelled, terminated, upgraded, or traded, the cemetery authority shall be entitled to a credit for the amount deposited and attributable to such space, provided that the cemetery authority can provide sufficient documentation, acceptable to the board, of the credit due.

G. No deposit to the perpetual or endowed care trust fund shall be required in those instances in which a cemetery authority uses or conveys an interment space for an indigent interment, provided the space so used or conveyed is contained within a special area or section of the cemetery set aside and used solely for indigent interments.

H. No deposit to the perpetual or endowed care trust fund shall be required on the discounts given on predevelopment or preconstruction interment spaces or rights of interment in a mausoleum, if the cemetery has filed with the board the required application and supporting documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982),

amended by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013).

§1503. Remittance by the Trustee to the Cemetery

Authority

[Formerly §1303]

A. The principal of the trust fund shall remain permanently intact and only the income shall be expended.

B. The net income, after the deduction of costs associated with the operation of the trust, may be remitted to the cemetery for care and maintenance of the cemetery as provided for by title 8. A cemetery or cemetery authority may not charge the trust for administrative costs for the operation of the cemetery or trust funds.

C. All income received by the trustees of cemetery care funds, which is not remitted to the cemetery authority within 120 days after the end of the latest tax reporting year of the cemetery authority, owning or operating a cemetery for which the trust fund is maintained, shall become, for all purposes, part of and added to the corpus or principal of the trust, and may not be withdrawn or distributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013).

§1505. Annual Reports Required

A. All perpetual or endowed care cemeteries shall submit a report to the board, on the forms prescribed by the board, within six months after the close of the cemetery authority's tax reporting year.

B. All trustees of perpetual or endowed care trust funds shall submit a report to the board, on the forms prescribed by the board, within 5 months after the close of the cemetery authority's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

C. If the trustee is unable to obtain the requisite signatures of the cemetery authority on the annual report as required by law, the trustee shall, nonetheless, submit the annual report to the board within the timeframe provided by law. Once the requisite signatures have been obtained, the trustee shall resubmit the completed report to the board and shall file the report with the clerk of court as required by the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013).

Chapter 17. Merchandise Trust Funds

§1701. Payments to the Merchandise Trust Fund

A. All contracts for the sale of cemetery related merchandise or personal property that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by Title 8, deposit into the trust fund a minimum of 70 percent of the price charged, less sales taxes, for each item of personal property contracted for, contracted for at a discount, or contracted for without charge or 125 percent of the wholesale cost, whichever is greater.

1. For deposits made at 125 percent of the wholesale cost, documentation to support wholesale cost must be maintained by the cemetery or other entity in the contract

file of the customer and must be reviewable and verifiable by the board.

B. All contracts for the sale of cemetery related services that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by Title 8, deposit into the trust fund a minimum of 70 percent of the price charged for such service.

1. For each service contracted for at a discount or contracted for without charge, the deposit shall in no event be less than 70 percent of the highest price charged for such service during the preceding 12 months. Any and all documentation to support 70 percent of the highest price charged for such services during the preceding 12 months must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

C. All deposits due on merchandise and services shall be delivered to the trustee not later than the twentieth day after the close of the month in which the contract is made. However, if the contract is financed by the seller and payments are made pursuant to an installment contract and the delivery of the merchandise and services is not to be made until the contract is paid in full or more than 120 days after entering into such contract, then payments to the trust fund must be deposited either:

1. not later than the twentieth day of the close of the month in which the contract is made; or

2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013).

§1703. Delinquent Payments to Merchandise Trust Fund

A. If a deposit is not timely made, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the deposit or 125 percent of the wholesale cost at the time the deposit is made, whichever is greater.

B. In the event that a cemetery or other entity converts previously stored merchandise to trusting, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the conversion or 125 percent of the wholesale cost at the time of conversion, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2749 (October 2013).

§1705. Withdrawals from Merchandise Trust Fund

A. The merchandise trust funds shall be held in trust both as to principal and income earned thereon, and shall remain intact, except that the costs of operation of the trust may be deducted from the income earned thereon, until delivery of the personal property is made or the services are performed. A cemetery, cemetery authority, or other entity required to establish and maintain a merchandise trust fund may not charge the income of the trust for its administrative costs for the operation of the cemetery, cemetery authority, other

entity, or trust funds. Within a merchandise trust fund, realized capital gains and losses shall be allocated in the same manner as income.

B. At the time of withdrawal, if a cemetery or other entity has not allocated the income earned to each separate account, as required by the Louisiana Cemetery Act, only the funds on deposit for such account shall be withdrawn. Upon satisfactory proof to the board that such income has been allocated to a particular account, the board may, in its discretion, authorize the withdrawal of such funds.

C. Prior to a withdrawal, if the cemetery or other entity is delinquent in its deposits to the merchandise trust fund, the board may require verification that all deposits on the pending withdrawals are current before such withdrawals can be made.

D. Upon satisfactory proof to the board that there has been an error or overfunding of the trust the board may, in its sole discretion, authorize the withdrawal or credit of such funds from the trust.

E. In the event that a cemetery or other entity converts accounts previously trusted to storage and presents satisfactory proof to the board that the merchandise to be stored is the same product selected by the customer and satisfactory proof of compliance with all storage requirements, the board may, at its discretion, authorize the withdrawal consistent with the requirements contained in the Louisiana Cemetery Act and the rules of the board. If the cemetery or other entity intends to substitute the product previously selected by the customer, a certification of acceptance of the substituted product must be obtained from the customer and retained by the cemetery or other entity in the contract file of the customer prior to the approval of the withdrawal by the board.

F. For the purposes of withdrawal, certification of delivery shall include:

1. for services:
 - a. a copy of the death certificate; or
 - b. a copy of the burial transit permit; or
 - c. a copy of the published obituary;
2. for merchandise:
 - a. if the merchandise is delivered prior to the death of the contract beneficiary, such certification shall include:
 - i. a written statement certifying delivery of the merchandise or personal property and signed by an authorized representative of the cemetery or other entity; or
 - ii. a photograph of the merchandise or personal property as installed on the cemetery space; or
 - iii. a copy of the paid-in-full invoice;
 - b. if the merchandise is delivered after the death of the contract beneficiary, such certification shall include:
 - i. at least one of the items listed in Paragraph 1, above; and
 - ii. at least one of the items listed in Subparagraph 2.a, above;
 3. all certification documents to support such withdrawals must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2749 (October 2013).

§1707. Annual Reports Required

A. All cemeteries and other entities shall submit a report and the report filing fee to the board, on the forms prescribed by the board, within six months after the close of the cemetery's or other entity's tax reporting year.

B. All trustees of merchandise trust funds shall submit a report to the board, on the forms prescribed by the board, within 90 days after the close of the cemetery's or other entity's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1709. Trust Reconciliation

A. In the event of a change of ownership or control of a cemetery, cemetery authority, or other entity, documentation that demonstrates that the existing merchandise trust fund complies with Title 8 and these rules shall be submitted to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1711. General Storage Requirements

A. All storage of merchandise pursuant to Title 8 shall be stored in accordance with the following requirements:

1. merchandise shall be stored in an organized and accessible manner in order to allow for expedient verification of compliance with Title 8 and these rules; and

2. merchandise shall be stored in an environment so as to ensure the preservation of the merchandise.

B. If any merchandise is determined to be damaged and unusable, the cemetery or other entity shall replace the merchandise with an item of like kind and quality. Any cemetery or other entity with such damaged or unusable merchandise shall not be in compliance with Title 8 or these rules until such time as the damaged or unusable items are replaced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

Chapter 19. On-Site Inspections and Examinations

§1901. On-Site Inspections and Examinations Generally

A. The board shall have the right to make on-site inspections and examinations of cemetery authorities or other entities to verify compliance with the requirements of Title 8 and these rules at any time during normal working hours and by any employee of the board or other person designated by the board to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1903. On-Site Inspections and Examinations of Trust Funds

[Formerly §1305]

A. The board shall have the right to make on-site inspections and examinations of the perpetual or endowed care trust funds or the merchandise trust funds of a cemetery authority or other entity and its books and records pertaining thereto at any time during normal working hours and by any

employee of the board or other person designated by the board to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1905. Records

A. At a minimum, the following records shall be made available to the board for the purposes of the on-site examinations or inspections:

1. financial, accounting, ledgers, and trust records.

a. for the sale, transfer, or conveyance of any interment space or interment right, and the sale of any cemetery related merchandise or services, the accounting records must delineate all payments made under a purchase agreement or contract, less sales tax and interest or finance charges, if any, and the portion of the payment upon which deposits are required to the perpetual or endowed care trust fund or the merchandise trust fund;

2. contracts, invoices, purchase agreements, interment rights, and deeds related to the sale, transfer, or conveyance of any interment space, interment right, or the sale of any cemetery related merchandise and services;

3. by-laws and rules of the cemetery;

4. ownership records of interment spaces and interment rights;

5. detailed maps and/or plats of the cemetery;

6. interment records; and

7. additional documentation and information the board or its representative may deem necessary to verify compliance with the provisions of Title 8 and the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1907. Verification of Compliance

[Formerly §1305]

A. During any such on-site examination the representative of the board shall, including, without limitation:

1. ascertain whether all deposits required to be made to the trust funds have been timely made by the cemetery or other entity;

2. ascertain whether trust funds are being administered pursuant to Title 8 and the rules of the board;

3. ascertain whether books and records of the cemetery or other entity are being maintained pursuant to Title 8 and the rules of the board;

4. inspect the grounds and other facilities of the cemetery to determine if perpetual care maintenance is, in fact, being reasonably performed; and

5. ascertain whether cemetery related merchandise and services have been delivered or stored in compliance with Title 8 and the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1909. Examination Fees

A. The board shall assess the cemetery or other entity the costs associated with the expenses of the examination for each trust fund according to the following schedule:

1. if the examination takes one hour or less, there will be no fee charged;
2. if the examination takes more than one hour, but less than two hours, the fee will be \$25 per cemetery, per examiner;
3. if the examination takes two hours or more, the fee will be \$50 per cemetery, per examiner, per day, up to two days; and
4. if the examination takes more than two days, the cost shall be paid by the cemetery authority in an amount not to exceed a total of \$500, unless irregularities are found, in which case, the cemetery authority shall pay the full cost of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

§1911. Report of Examination

A. The board shall furnish a copy of the on-site examination report to the cemetery, within a reasonable period of time, specifying any violations or exceptions noted during the examination. The cemetery shall have 30 days, after receipt of the report, in which to provide the board with a response to any violations or exceptions so noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

Chapter 21. Qualifications of Applicants for Certificates of Authority or a License

§2101. Qualifications [Formerly §1501]

A. The Louisiana Cemetery Act requires the board to determine generally whether applicants and their officers, directors, owners, and managerial personnel have the ability, experience, financial stability and responsibility, integrity, trustworthiness, and have good personal and business reputations, in order to ensure that the applicant's operation of a cemetery, cemetery sales organization, or cemetery management organization will be of permanent benefit to the community in which it is located.

B. While no rigid specifications, particularly as to character, can be fashioned, some objective evidence of a lack of such qualifications should exist before an application is denied. Unless the applicant produces evidence, acceptable to the board, indicating complete rehabilitation, the application should be denied if the applicant is an individual who has, or is a firm, association, corporation or limited liability company any of whose officers, owners, directors, limited liability company managers or managerial personnel has or have:

1. been convicted of a felony;
2. employed misrepresentation or deception in obtaining, renewing, or reinstating a license or privilege from a public entity, or in seeking a certificate of authority or license from this board; or
3. used false or misleading advertising or solicitation in any business venture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:468 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

Chapter 23. Miscellaneous

§2301. Consumer Complaints

A. Upon receipt of a written consumer complaint on a form prescribed by the board, the board on its own or in conjunction with the attorney general may initiate any such investigation or inquiry to verify compliance with the Louisiana Cemetery Act and the rules of the board.

B. The board may require the cemetery that is the subject of the complaint to respond to any allegations contained in a properly submitted complaint, in writing, within 30 days of the cemetery's receipt of the complaint.

C. Nothing herein shall prohibit the cemetery authority, whether notified of a complaint by the board or not, from contacting the consumer and attempting to resolve the matter amicably without the assistance or intervention of the board.

D. Any inquiry or investigation undertaken pursuant to such consumer complaints are considered to be investigations by the board for the purposes of R.S. 8:66.1 and 44:4(44).

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

§2303. Issuance of Documents Reflecting Title and Rights in Cemetery Spaces

A. The cemetery shall issue a title or certificate of interment right to the purchaser or transferee within 30 days of payment in full of the contract or transfer, if made without charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

§2305. Standards for Graves and Required Maps and Plats

A. A standard adult grave shall measure at least 42 inches in width and 96 inches in length, except for preinstalled vaults in designated areas and grave spaces for cremated remains.

B. Prior to the first sale of cemetery spaces or interment rights, the cemetery shall prepare a map documenting the establishment of recoverable internal survey reference markers installed no more than 50 feet apart.

C. All maps or plats shall include, without limitation:

1. the number of cemetery spaces available for sale;
2. the location of each cemetery space;
3. the number designation assigned to each cemetery space;
4. the dimensions of a standard adult grave space;
5. information sufficient to locate the map within the land survey submitted to the board.

D. In the event that the board finds, after a hearing, that a cemetery cannot specifically identify the location of interments, the board may, at its discretion, and for the protection of the health, safety, and welfare of the public, prohibit further sales or burials in the cemetery or particular

sections of the cemetery until the cemetery is in compliance with Title 8 and these rules.

E. The location of monuments and other memorials that contain cremated remains must be shown on the cemetery's maps or plats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

§2307. Preconstruction Projects

A. Prior to the first sale of a cemetery space or the right of use or interment in any cemetery space in a structure that has not yet been constructed or developed, the cemetery authority shall submit to the board, on a form prescribed by the board, the following:

1. a copy of the preliminary plans;
2. a map or plat delineating the sections, blocks, plots, avenues, walks, halls, rooms, corridors, elevations, or other subdivisions, with descriptive names or numbers;
3. a copy of all sales and promotional material;
4. a copy of the preconstruction/development sales contract; and
5. any such additional information and documentation that the board may deem necessary.

B. Prior to the commencement of construction, the cemetery shall notify the board, in writing, and request approval of any significant modifications to the preliminary plans previously submitted to the board. Significant modifications include, but are not limited to, cancellation of a project, downsizing of a project, substitution of construction materials, and changes in or elimination of a feature of the project.

C. If the cemetery anticipates that it will not meet the commencement and/or completion deadlines set forth in Title 8, the cemetery shall request an extension from the board, in writing, setting forth the reasons for the delays. The board shall consider the extension request at its next regularly scheduled meeting following receipt of the request.

D. Within 30 days of completion of a preconstruction or predevelopment project, the cemetery shall provide the board with a completion notification on a form prescribed by the board, along with any additional information and documentation that the board may deem necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2752 (October 2013).

Chapter 25. Construction; Divisibility

§2501. Construction; Divisibility [Formerly §1701]

A. If any provision of these rules or the application thereof is held invalid, the remainder of these rules or other applications of such provisions shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2752 (October 2013).

Lucy L. McCann
Director

1310#017

RULE

Department of Health and Hospitals Board of Dentistry

Notice of Hearings (LAC 46:XXXIII.903 and 907)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.903 and 907.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 9. Formal Adjudication

§903. Initiation of Proceedings

A. When determined by the president that a formal adjudication is warranted, proceedings to adjudicate an administrative enforcement action shall be initiated by serving the Complaint filed in accordance with §905 of this Chapter. Service of the Complaint on the licensee may be accomplished by personal delivery to the licensee by an agent of the board, or delivery by certified U.S. Mail return receipt requested or courier at the most current mailing address of the licensee as indicated in the official records of the board. This Complaint may be signed by either the president or a board member or employee designated by the president. Said notice shall name the accused licensee as respondent.

B. If the public health, safety, and/or welfare imperatively requires emergency action, the board, through its president, may order an interim suspension of a dental or dental hygiene license pending formal disciplinary proceedings, as provided in R.S. 49:961(C). The president shall appoint one or more board members to hear the evidence in support of an immediate interim suspension and to make recommendations to the board president, who shall thereafter issue whatever order of interim suspension pending formal adjudication as is warranted by the circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (4), (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:1317 (October 1993), amended LR 22:1218 (December 1996), LR 27:1892 (November 2001), LR 39:2752 (October 2013).

§907. Notice of Hearing

A. Upon the filing of an administrative complaint pursuant to §903 and §905 of this Chapter, the board shall schedule the complaint for hearing before the committee not fewer than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the complaint counsel or respondent pursuant to a showing of proper grounds. In the event that the respondent's license, permit, certification, or registration has been suspended by the board pending hearing, pursuant to R.S. 49:961(C), formal adjudication of the complaint shall be noticed and scheduled not more than 45 days after the filing of the

complaint; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the complaint counsel or respondent pursuant to a showing of proper grounds.

B. A written notice accompanied by the complaint of the time, date, and place of the scheduled hearing regarding the matters set forth in the complaint shall be sent to the respondent by personal delivery to the licensee by an agent of the board, or delivery by certified U.S. Mail return receipt requested or courier at the most current mailing address of the licensee as indicated in the official records of the board. This notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held and shall be accompanied by a certified copy of the administrative complaint. In the event respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the administrative complaint shall be deemed admitted and proven by clear and convincing evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(4) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:1318 (October 1993), amended LR 22:25 (January 1996), LR 25:1476 (August 1999), LR 27:1892 (November 2001), LR 39:2752 (October 2013).

Peyton B. Burkhalter
Executive Director

1310#026

RULE

Department of Health and Hospitals Board of Dentistry

Required Equipment (LAC 46:XXXIII.1511)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.1511.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 15. Anesthesia/Analgesia Administration

§1511. Required Facilities, Personnel and Equipment for Sedation Procedures

A. - A.7.d. ...

e. pulse oximeter when parenteral or enteral moderate sedation on a patient is performed;

f. equipment to monitor partial pressure of carbon dioxide when parenteral moderate sedation, deep sedation, or general anesthesia is administered.

A.8. - B.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 32:244 (February 2006), LR 37:1407 (May 2011), 39:91 (January 2013), LR 39:2753 (October 2013).

Peyton B. Burkhalter
Executive Director

1310#024

RULE

Department of Health and Hospitals Board of Dentistry

Sedation (LAC 46:XXXIII.1506 and 1507)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.1506 and 1507.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 15. Anesthesia/Analgesia Administration

§1506. Moderate Sedation with Enteral Drugs

A. - D. ...

E. For adult patients, the licensee must provide proof of current certification in advanced cardiac life support as defined by the American Heart Association or its equivalent. The board will only accept an ACLS course which includes a practical component which is personally attended. For pediatric patients, the licensee must provide proof of current certification in pediatric life support (PALS), or its equivalent. The board will only accept a PALS course which includes a practical component which is personally attended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:793.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 30:2306 (October 2004), amended LR 32:244 (February 2006), LR 33:847 (May 2007), LR 33:2653 (December 2007), LR 39:90 (January 2013), LR 39:2753 (October 2013).

§1507. General Anesthesia/Deep Sedation

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

b. provide proof of current certification in the cardiopulmonary resuscitation course "Advanced Cardiac Life Support" as defined by the American Heart Association, or its equivalent. The board will only accept an ACLS course which includes a practical component which is personally attended;

c. provide proof of current certification in Pediatric Advanced Life Support (PALS) when administering sedation to patients under the age of 13. The board will only accept a PALS course which includes a practical component which is personally attended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 32:2057 (November 2006), LR 33:2653 (December 2007), LR 38:1958 (August 2012), LR 39:2753 (October 2013).

Peyton B. Burkhalter
Executive Director

1310#025

RULE

Department of Health and Hospitals Board of Examiners of Psychologists

Contact Information (LAC 46:LXIII.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Board of Examiners of Psychologists has amended LAC 46:LXIII.Chapter 9, Licensees, Section 903. This amendment modifies the title of Section 903 to "Contact Information." This Rule requires psychologists to maintain an accurate work and mailing address on file along with a current email address.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXIII. Psychologists

Chapter 9. Licensees

§903. Contact Information

A. A licensed psychologist shall notify the board within 30 days, with documentation, attesting to any change of contact information including mailing address, work address, telephone number and email address. This documentation notice shall include the psychologist's, full name, license number, and the old and new contact information.

B. Should a psychologist be displaced to a temporary location due to an emergency, the psychologist shall notify the board within 30 days, with documentation attesting to the temporary change in contact information. The documented notice shall include the psychologist's full name, license number, old and new temporary contact information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 32:1227 (July 2006), amended LR 39:2754 (October 2013).

Kelly Parker
Executive Director

1310#001

RULE

Department of Health and Hospitals Board of Examiners of Psychologists

Continuing Education (LAC 46:LXIII.Chapter 8)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of Health and Hospitals, Board of Examiners of Psychologists

has amended LAC 46:LXIII.Chapter 8, Continuing Education. This modification also creates nine categories in which a psychologist can obtain continuing education credit, beginning July 2014 and July 2015. This amendment increases the required number of continuing education hours for psychologists beginning in July 2016 and July 2017.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXIII. Psychologists

Chapter 8. Continuing Education

§801. Preface

A. Pursuant to R.S. 37:2357(B), each licensed psychologist is required to complete continuing education hours within biennial reporting periods. Continuing education is an ongoing process consisting of learning activities that increase professional development. Continuing professional development (CPD) activities:

1. are relevant to psychological practice, education and science;
2. enable psychologists to keep pace with emerging issues and technologies; and
3. allow psychologists to maintain, develop, and increase competencies in order to improve services to the public and enhance contributions to the profession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 16:770 (September 1990), amended LR 19:46 (January 1993), LR 32:1228 (July 2006), LR 36:1007 (May 2010), LR 39:2754 (October 2013).

§803. Requirements

A. For the reporting periods that begin July 2014 and July 2015, each psychologist is required to complete 30 hours or credits of continuing professional development within the biennial reporting period. The CPD credits must conform to the percentage distribution requirements listed below in Subsection C. For the reporting periods that begin July 2016 and July 2017 and henceforth, 40 credits of continuing professional development will be required in the biennial reporting period and the hours must conform to the distribution listed below in Subsection C.

B. Within each reporting period, two of the required hours or credits of continuing professional development must be within the area of ethics or law.

C. Within each reporting period, licenses must earn credits in at least two of the nine categories listed under Subsection D of this Section.

D. Licensees can accumulate continuing professional development credits in nine categories.

1. Professional

a. Peer Consultation (1 hour of peer consultation equals 1 credit). Examples include case consultation groups, journal clubs, regional research groups, mentoring, and shadowing a colleague. If learning is reciprocal, credit is split between both licensees.

i. If Requested, Documentation Required to Earn Credit—verification form providing evidence that it is a structured program of consultation with regularly scheduled meetings and showing the nature of the consultation. Additionally, the person providing the consultation must attest, by signature, to the description of the program,

number of hours met and that the verification form has been completed.

b. Practice Outcome Monitoring (1 completed questionnaire equals 1 credit)—assessing patient/client outcomes via a questionnaire that is shown to be of empirical value.

i. If Requested, Documentation Required to Earn Credit—verification form providing number of hours spent with patient/client and a de-identified copy of the patient/client questionnaire.

c. Professional Activities (1 year equals 10 credits)—serving on a national, regional, or state psychological association board or committee or board member of regulatory body related to the field of psychology.

i. If Requested, Documentation Required to Earn Credit—verification form and documentation from the professional organization confirming the service.

d. Conferences/Conventions (1 conference day equals 1 credit)—attendance at a conference related to the field of psychology or a conference, which aids in the licensee's professional development.

i. If Requested, Documentation Required to Earn Credit—copy of registration materials. This credit is separate from traditional continuing education units that may be awarded at said conference.

2. Academic

a. Academic Courses (1 three-hour course or equivalent equals 20 credits)—graduate-level course related to psychologist's discipline and practice taken for credit (not audit) from a regionally accredited university or one pre-approved by the board.

i. If Requested, Documentation Required to Earn Credit—course transcript.

b. Instruction (1 three-hour course equals 20 credits; 1 full-day workshop equals 10 credits)—teaching a course in a regionally accredited institution or full-day workshop presentation. Credit can only be received the first time teaching or presenting the material.

i. If Requested, Documentation Required to Earn Credit—syllabus or brochure. Materials used may be requested upon an audit.

c. Publications (1 article equals 10 credits; book chapter equals 10 credits)—author of an article for peer-reviewed publications or author, editor or co-editor of a book related to the field of psychology.

i. If Requested, Documentation Required to Earn Credit—copy of journal abstract or copy of the publication.

3. Traditional Continuing Education

a. Approved Sponsored CE (1 hour equals 1 credit)—workshops from a recognized approved sponsor (APA or any of its approved sponsors, academies of professional specialty boards, regionally accredited colleges or universities, continuing medical education in category 1 of AMA or its subsidiaries, including grand rounds). Home study, even with an approved CE sponsor, is considered self-directed learning.

i. If Requested, Documentation Required to Earn Credit—appropriate documentation from sponsor.

b. Self-directed Learning (1 hour equals 1 credit). Examples include reading, Internet, videos, and/or other unsponsored activities.

i. If Requested, Documentation Required to Earn Credit—completion of self-directed learning verification form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 16:770 (September 1990), amended LR 19:46 (January 1993), LR 32:1228 (July 2006), LR 39:2754 (October 2013).

§809. Reporting Requirements

A. Each psychologist shall complete, at the end of reporting periods, the continuing professional development verification form and the continuing education report and file accordingly with the board.

B. Signature. By signing the report form, the licensee signifies that the report is true and accurate.

C. Documentation. Each licensee shall retain corroborative documentation of his or her continuing professional development for two years. Although this documentation is not routinely required as part of the licensee's submission, the board may, at its discretion, request such documentation. Any misrepresentation of continuing professional development will be cause for disciplinary action by the board.

D. Biennial Reporting Period. Psychologists holding even-numbered licenses must submit to the board, in even-numbered years, their continuing professional development report along with their license renewal form. Psychologists holding odd-numbered licenses must submit to the board, in odd-numbered years, their continuing professional development report along with their license renewal form. Continuing professional development reports shall be due July 1, and considered delinquent at the close of business July 31, in the year in which their continuing professional development report is due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:47 (January 1993), amended LR 32:1229 (July 2006), LR 39:2755 (October 2013).

§811. Extensions/Exemptions

A. Licensees on extended active military service outside the state of Louisiana during the applicable reporting period and who do not engage in delivering psychological services within the state of Louisiana may be granted in extension or an exemption if the board receives a timely confirmation of such status.

B. Licensees who are unable to fulfill the requirement because of illness or other personal hardship may be granted an extension or an exemption if timely confirmation of such status is received by the board.

C. Newly licensed psychologists are exempt from continuing professional development requirements for the remainder of the year for which their license or certification is granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2354.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:47 (January 1993), amended LR 32:1229 (July 2006), LR 39:2755 (October 2013).

§813. Noncompliance

A. Noncompliance shall include, in part, incomplete reports, unsigned reports, failure to file a report, and failure to report a sufficient number of acceptable continuing professional development credits as defined in LAC 46:LXIII.803.

B. Failure to fulfill the requirements of the continuing professional development rule shall cause the license to lapse pursuant to R.S. 37:2357.

C. If the licensee fails to meet continuing professional development requirements by the appropriate date, the license shall be regarded as lapsed at the close of business July 31 of the year for which the licensee is seeking renewal.

D. The state Board of Examiners of Psychologists shall serve written notice of noncompliance on a licensee determined to be in noncompliance. The notice will invite the licensees to request a hearing with the board or its representative to claim an exemption or to show compliance. All hearings shall be requested by the licensee and scheduled by the board in compliance with any time limitations of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:47(January 1993), amended LR 32:1229 (July 2006), LR 34:1406 (July 2008), LR 39:2756 (October 2013).

§815. Reinstatement

A. For a period of two years from the date of lapse of the license, the license may be renewed upon proof of fulfilling all continuing professional development requirements applicable through the date of reinstatement and upon payment of all fees due under R.S. 37:2357.

B. After a period of two years from the date of lapse of the license, the license may be renewed by passing a new oral examination before the board and payment of a fee equivalent to the application fee and renewal fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:47 (January 1993), LR 39:2756 (October 2013).

Kelly Parker
Executive Director

1310#002

RULE

Department of Health and Hospitals Board of Examiners of Psychologists

Temporary Registration (LAC 46:LXIII.Chapter 10)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Board of Examiners of Psychologists has amended LAC 46:LXIII.Chapter 10, Temporary Registration. This Rule modifies licensing requirements for visiting psychologists

and adds a provision for qualified military applicants or their qualified spouses pursuant to Act 276.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXIII. Psychologists

Chapter 10. Temporary Registration

§1001. Registration of Out-of-State Psychologist

A. Any nonresident licensed for independent practice as a doctoral-level psychologist in the state of his/her residence and which state will permit residents of this state a like and similar privilege as provided herein may practice as a psychologist for a period not to exceed 30 days in any one calendar year or the current expiration of his resident license, whichever comes first, to the same extent and manner as if licensed in this state.

B. Upon application for temporary registration, accompanied by such fee determined by the board, the board shall issue a certification of temporary registration to a psychologist not licensed in Louisiana, whose license is current, unrestricted, and at the doctoral-level in the jurisdiction of his/her residence, and who furnishes upon a form and in such manner the board prescribes, the following:

1. completed, notarized, registration form signed by the out-of-state psychologist, shall be submitted along with the appropriate fee, a copy of the respective current and unrestricted licenses, picture identification, and any other information pertaining to identification or fitness to practice as requested by the board;

2. documentation that the psychologist is engaged in a legitimate professional setting, and provides satisfactory documentation to the board of the location site(s) that he/she will be providing psychological services and dates of service;

3. a statement attesting to any prior disciplinary actions, felonies or convictions, participation in an impaired psychologist program, or any pending litigations or actions the licensee may be facing; and

4. documentation that the state in which the out-of-state psychologist resides provides a like and similar privilege to licensed Louisiana psychologists.

C. All applicants for temporary registration must successfully pass the Louisiana jurisprudence examination and pay the appropriate fee associated with such exam. Temporary applicants must pass the jurisprudence examination prior to the issuance of a certification of temporary registration. Jurisprudence exam scores will be valid for three years.

D. Upon issuance of the certification of temporary registration, the psychologist shall comply with the Louisiana licensing law for psychologists, R.S. title 37, chapter 28, the *Louisiana Administrative Code*, Title 46, Part LXIII and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skills, training, and ability.

E. Should a qualified psychologist registered with the board thereafter fail to comply with any requirement or condition established by this Rule, the board may immediately terminate his/her registration. In addition, any known jurisdiction in which the psychologist holds a license will be notified of any complaint, investigation and/or disciplinary proceedings by this board.

F. In the event a psychologist fails to register with the board, but practices psychology, whether gratuitously or otherwise, then such conduct will be considered the unlawful practice of psychology and prosecuted accordingly.

G. Temporary registration may be granted no more than three consecutive years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2365(D).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:459 (March 2007), amended LR 36:1007 (May 2010), LR 39:2756 (October 2013).

§1002. Emergency Temporary Registration for Psychologists

A. Pursuant to R.S. 29:769(E), licensed psychologists from other jurisdictions of the United States may respond to a declared public health emergency and be granted a temporary registration to engage in the practice of psychology as defined in R.S. 37:2352(5).

B. Prior to providing professional services in Louisiana a psychologist licensed at the doctoral level in another jurisdiction of the United States, shall apply for an emergency temporary registration (ETR). The application for ETR shall be made available via the board website or mailed upon request.

C. Applications for emergency temporary registration shall be processed as priority during a declared emergency.

D. Accordingly, additional requirements for an ETR may be imposed pursuant to the emergency declaration issued which more properly address the needs of the particular declared emergency.

E. A psychologist not licensed in Louisiana, whose license is current, unrestricted, and at the doctoral-level in the jurisdiction of his/her residence in the United States, and properly registers with the board may gratuitously provide psychological services if:

1. the psychologist is engaged in a legitimate relief effort during the emergency period, and provides satisfactory documentation to the board of the location site(s) that he/she will be providing psychological services;

2. the psychologist complies with the Louisiana licensing law for psychologists, R.S. title 37, chapter 28, the *Louisiana Administrative Code*, Title 46, Part LXIII and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skills, training, and ability; and

3. the psychologist renders psychological services on a gratuitous basis with no revenue of any kind to be derived whatsoever from the provision of psychological services with the state of Louisiana.

F. The authority provided for the Emergency Rule shall be applicable for a period of time not to exceed 60 days at the discretion of the board, with the potential extension of up to two additional periods not to exceed 60 days for each extension as determined appropriate and necessary by the board.

G. All interested psychologists shall submit to the board a copy of their respective current and unrestricted licenses, picture identification, and any other information pertaining to identification or fitness to practice as requested by the board.

H. Should a qualified psychologist registered with the board thereafter fail to comply with any requirement or

condition established by this Rule, the board may immediately terminate his/her registration. In addition, any known jurisdiction in which the psychologist holds a license will be notified of any complaint, investigation and/or disciplinary proceedings by this board.

I. In the event a psychologist fails to register with the board, but practices psychology, whether gratuitously or otherwise, then such conduct will be considered the unlawful practice of psychology and prosecuted accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:769(E).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:459 (March 2007), amended LR 36:1007 (May 2010), LR 39:2757 (October 2013).

§1003. Military Applicants

A. Any active member of the military or their spouse shall be granted expedited status for licensure upon an application for licensure, payment of the appropriate fee, and written request for expedited process.

B. Upon receipt of the above information and if the psychologist is licensed in any other state, he/she shall be considered for temporary license at the next regularly scheduled board meeting. If the psychologist meets the requirements for licensure, he/she shall be granted a temporary license.

C. The temporary license may be extended while documentation for a full license is gathered, and so long as the application is active.

D. Upon issuance of the temporary license, the psychologist shall comply with the Louisiana licensing law for psychologists, R.S. title 37, chapter 28, the *Louisiana Administrative Code*, Title 46, Part LXIII and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skills, training, and ability.

E. All military applicants will be required to submit to a criminal background check and pass a Louisiana jurisprudence examination before issuance of a permanent license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2365(D).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 39:2757 (October 2013).

Kelly Parker
Executive Director

1310#003

RULE

Department of Health and Hospitals Board of Wholesale Drug Distributors

Requirements, Qualifications, and Recordkeeping
(LAC 46:XCI.301, 305, and 311)

The Louisiana Board of Wholesale Drug Distributors has amended LAC 46:XCI.301, 305, and 311 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq., of the Louisiana Board of Wholesale Drug Distributors Practice Act. These Rule amendments will support the board's ability to license

entities and regulate the wholesale distribution of legend drugs and legend devices into and within the state of Louisiana in its effort to safeguard the life and health of its citizens and promote the public welfare. The amendments to the Rule are set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XCI. Wholesale Drug Distributors

Chapter 3. Wholesale Drug or Device Distributors

§301. Licensing, Renewal and Reinstatement Requirements

A. - K. ...

L. A license issued to a wholesale drug or device distributor will be revoked after 180 days from the date of issuance if an inspection and disciplinary hearing reveal a lack of legitimate business activity or a violation of the provisions of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 32:396 (March 2006), LR 34:875 (May 2008), LR 35:1538 (August 2009), LR 36:322 (February 2010), LR 39:2758 (October 2013).

§305. Qualifications

A. The board shall consider the following factors in issuing an initial license, the renewal of an existing license, or reinstatement of a license to a person to engage in the wholesale distribution of drugs and devices:

1. any convictions of the applicant or designated responsible party under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

2. any felony convictions of the applicant or designated responsible party under federal, state, or local laws;

3. - 9. ...

B. The board shall request all criminal history records information necessary to discover any information relating to the above factors for all new license applicants physically located in Louisiana. Criminal history records information shall only be requested for those licensees of previously issued licenses if they have appointed a new designated responsible party or if they have transferred an ownership interest of more than 10 percent to another owner.

C. The board shall deny a license to an applicant if it determines that the issuing of such a license would not be in the interest of public health, safety or welfare.

D. The designated responsible party must have knowledge of the policies and procedures pertaining to operations of the applicant or licensed wholesale drug or device distribution facility.

1. After January 1, 2014, any designated responsible party not already occupying the position must meet the following requirements:

a. be at least 21 years of age;

b. have at least two years of full-time employment history with either a pharmacy, legend drug or device distributor, or medical gas distributor in a capacity related to the dispensing, distribution, and recordkeeping of legend drugs or devices; or other similar qualifications as deemed acceptable by the board;

c. be employed by the applicant or wholesale drug or device distributor in a full-time position;

d. be actively involved in and aware of the actual daily operation of the wholesale drug or device distributor;

e. be physically present at the facility of the applicant or wholesale drug or device distributor during regular business hours, except when absence of the designated responsible party is authorized, including, but not limited to, sick leave and vacation leave;

f. serve in the capacity of a designated responsible party for only one applicant or wholesale drug or device distributor at a time, except where more than one licensed wholesale drug or device distributor is co-located in the same facility;

g. not have any felony convictions under federal, state, or local law relating to wholesale or retail legend drug or device distribution or controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 32:398 (March 2006), LR 35:1539 (August 2009), LR 39:2758 (October 2013).

§311. Drug or Device Distribution Recordkeeping

A. - A.3. ...

B. Wholesale drug or device distributors shall establish and maintain financial records, including all financial and banking receipts as they relate to drug, device, or medical gas sales, distribution, inventories, receipts or deliveries and monthly banking statements and deposit receipts for all banking accounts containing funds with which drugs or devices have been purchased and/or sold for a minimum of three years from the date each record was created.

C. Inventories and records shall be made available for inspection and photocopying by any official authorized by the board for a period of three years following disposition of the drugs or devices at issue.

D. Records described in this regulation that are kept at the inspection site facility or licensed physical location or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site facility or licensed physical location and not electronically retrievable shall be made available for inspection within two working days of a request by any official authorized by the board.

E. Copies of current licenses for customers who are authorized by law or regulation to procure or possess drugs or devices shall be maintained for all customers that are shipped or sold drugs or devices. If customer licenses are maintained off site, a list of customer names, addresses, license numbers, and license expiration dates shall be maintained at the licensed distribution location for all customers that are shipped or sold drugs or devices.

F. Wholesale drug or device distributors that distribute medical gas are not required to maintain a perpetual inventory on oxygen, but are required to maintain perpetual inventories on all other medical gases.

G. Wholesale drug or device distributors physically located and conducting operations in Louisiana:

1. shall not purchase or receive drugs or devices from other than wholesale drug distributors licensed by the board to ship or sell in or into Louisiana; and

2. shall notify the board of any wholesalers not licensed by this Board shipping in or into Louisiana or selling or offering to sell in or into Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:383 (April 1992), amended LR 29:1480 (August 2003), LR 32:399 (March 2006), LR 34:875 (May 2008), LR 36:322 (February 2010), LR 39:2758 (October 2013).

John Liggio
Executive Director

1310#020

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Adult Day Care Centers—Licensing Standards (LAC 48:I.Chapter 43)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 48:I.Chapter 43 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 43. Adult Day Care Centers

§4301. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:109 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4303. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:109 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4305. Types of Programs (Modules) Licensed

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:109 (January 1998), repealed by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4307. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:110 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4309. Procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971 through 1980.

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 24:111 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4311. General Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:112 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4313. Administration and Organization

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:113 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4315. Management Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:113 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4317. Human Resources

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:114 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2759 (October 2013).

§4319. Direct Service Management

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:116 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

§4321. Food and Nutrition

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:118 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

§4323. Transportation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:118 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

§4325. General Safety Practices

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:119 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

§4327. Emergency and Safety

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:119 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

§4329. Physical Environment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

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 24:119 (January 1998), repealed by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

Kathy H. Kliebert
Secretary

1310#077

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening—Diagnosis and Treatment
School-Based Nursing Services (LAC 50:XV.Chapter 95)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XV.Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 95. School-Based Nursing Services

§9501. General Provisions

A. EPSDT school-based nursing services are provided by a registered nurse (RN) within a local education agency (LEA). The goal of these services is to prevent or mitigate disease, enhance care coordination, and reduce costs by preventing the need for tertiary care. Providing these services in the school increases access to health care for children and youth resulting in a more efficient and effective delivery of care.

B. RNs providing school-based nursing services are required to maintain an active RN license with the state of Louisiana and comply with the Louisiana Nurse Practice Act.

C. School-based nursing services shall be covered for all recipients in the school system and not limited to those with an individualized education program (IEP).

D. School boards and staff shall collaborate for all services with the Medicaid recipient's BAYOU HEALTH plan and shall ensure compliance with established protocols. In a fee-for-service situation, for the non-BAYOU HEALTH individuals, staff will make necessary referrals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

§9503. Covered Services

A. The following school-based nursing services shall be covered.

1. Episodic Care. This is unplanned care that occurs when children see the nurse for assessment of a health concern. Episodic care includes but is not limited to:

- a. nose bleeds;
- b. cuts;

- c. bruises; or
- d. flu symptoms.

2. Chronic Medical Condition Management and Care Coordination. This is care based on one of the following criteria.

a. The child has a chronic medical condition or disability requiring implementation of a health plan/protocol (examples would be children with asthma, diabetes, or cerebral palsy). There must be a written health care plan based on a health assessment performed by the RN. The date of the completion of the plan and the name of the person completing the plan must be included in the written plan. Each health care service required and the schedule for its provision must be described in the plan.

b. Medication Administration. This service is scheduled as part of a health care plan developed by either the treating physician or the school district LEA. Administration of medication will be at the direction of the physician and within the license of the RN and must be approved within the district LEA policies.

c. Implementation of Physician's Orders. These services shall be provided as a result of receipt of a written plan of care from the child's physician/BAYOU HEALTH provider or an IEP/Health care plan for students with disabilities.

3. Immunization Assessments. These services are nursing assessments of health status (immunizations) required by the Office of Public Health. This service requires an RN to assess the vaccination status of children in these cohorts once each year. This assessment is limited to the following children:

- a. children enrolling in a school for the first time;
- b. pre-kindergarten children;
- c. kindergarten children; and
- d. children entering sixth grade; or
- e. any student 11 years of age regardless of grade.

4. EPSDT Program Periodicity Schedule for Screenings. A nurse employed by a school district may perform any of these screens within their licensure for BAYOU HEALTH members as authorized by the BAYOU HEALTH plan or as compliant with fee-for-service for non-BAYOU HEALTH individuals. The results of these screens must be made available to the BAYOU HEALTH provider as part of the care coordination plan of the district. The screens shall be performed according to the periodicity schedule including any inter-periodic screens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013).

§9505. Reimbursement Methodology

A. Payment for EPSDT school-based nursing services shall be based on the most recent school year's actual cost as determined by desk review and/or audit for each LEA provider.

1. Each LEA shall determine cost annually by using DHH's cost report for nursing service cost form based on the direct services cost report.

2. Direct cost shall be limited to the amount of total compensation (salaries, vendor payments and fringe benefits) of current nursing service providers as allocated to nursing services for Medicaid special education recipients.

The direct cost related to the electronic health record shall be added to the compensation costs to arrive at the total direct costs for nursing services. There are no additional direct costs included in the rate.

3. Indirect cost shall be derived by multiplying the cognizant agency indirect cost unrestricted rate assigned by the Department of Education to each LEA. There are no additional indirect costs included.

4. To determine the amount of nursing services cost that may be attributed to Medicaid; the ratio of total Medicaid students in the LEA to all students in the LEA is multiplied by total direct cost. Cost data is subject to certification by each LEA. This serves as the basis for obtaining federal Medicaid funding.

B. For the nursing services, the participating LEAs' actual cost of providing the services shall be claimed for Medicaid federal financial participation (FFP) based on the following methodology.

1. The state shall gather actual expenditure information for each LEA through its payroll/benefits and accounts payable system.

2. Develop Direct Cost—The Payroll Cost Base. Total annual salaries and benefits paid, as well as contracted (vendor) payments, shall be obtained initially from each LEA's payroll/benefits and accounts payable system. This data shall be reported on DHH's nursing services cost report form for all nursing service personnel (i.e. all personnel providing LEA nursing treatment services covered under the state plan).

3. Adjust the Payroll Cost Base. The payroll cost base shall be reduced for amounts reimbursed by other funding sources (e.g. federal grants). The payroll cost base shall not include any amounts for staff whose compensation is 100 percent reimbursed by a funding source other than state/local funds. This application results in total adjusted salary cost.

4. Determine the Percentage of Time to Provide All Nursing Services. A time study which incorporates the CMS-approved Medicaid administrative claiming (MAC) methodology for nursing service personnel shall be used to determine the percentage of time nursing service personnel spend on nursing services and general and administrative (G and A) time. This time study will assure that there is no duplicate claiming. The G and A percentage shall be reallocated in a manner consistent with the CMS-approved Medicaid administrative claiming methodology. Total G and A time shall be allocated to all other activity codes based on the percentage of time spent on each respective activity. To reallocate G and A time to nursing services, the percentage of time spent on nursing services shall be divided by 100 percent minus the percentage of G and A time. This shall result in a percentage that represents the nursing services with appropriate allocation of G and A. This percentage shall be multiplied by total adjusted salary cost as determined Paragraph B.4 above to allocate cost to school based services. The product represents total direct cost.

a. A sufficient number of nursing service personnel shall be sampled to ensure results that will have a confidence level of at least 95 percent with a precision of plus or minus five percent overall.

5. Determine Indirect Cost. Indirect cost shall be determined by multiplying each LEA's indirect unrestricted rate assigned by the cognizant agency (the Department of

Education) by total adjusted direct cost as determined under Paragraph B.3 above. No additional indirect cost shall be recognized outside of the cognizant agency indirect rate. The sum of direct cost and indirect cost shall be the total direct service cost for all students receiving nursing services.

6. Allocate Direct Service Cost to Medicaid. To determine the amount of cost that may be attributed to Medicaid, total cost as determined under Paragraph B.5 above shall be multiplied by the ratio of Medicaid students in the LEA to all students in the LEA. This results in total cost that may be certified as Medicaid's portion of school-based nursing services cost.

C. Reconciliation of LEA Certified Costs and Medicaid Management Information System (MMIS) Paid Claims. Each LEA shall complete the nursing services cost report and submit the cost report(s) no later than five months after the fiscal year period ends (June 30), and reconciliation shall be completed within 12 months from the fiscal year end. All filed nursing services cost reports shall be subject to desk review by the department's audit contractor. The department shall reconcile the total expenditures (both state and federal share) for each LEA's nursing services. The Medicaid certified cost expenditures from the nursing services cost report(s) will be reconciled against the MMIS paid claims data and the department shall issue a notice of final settlement pending audit that denotes the amount due to or from the LEA. This reconciliation is inclusive of all nursing services provided by the LEA.

D. Cost Settlement Process. As part of its financial oversight responsibilities, the department shall develop audit and review procedures to audit and process final settlements for certain LEAs. The audit plan shall include a risk assessment of the LEAs using available paid claims data to determine the appropriate level of oversight.

1. The financial oversight of all LEAs shall include reviewing the costs reported on the nursing services cost reports against the allowable costs, performing desk reviews and conducting limited reviews.

2. The department will make every effort to audit each LEA at least every four years. These activities shall be performed to ensure that audit and final settlement occurs no later than two years from the LEA's fiscal year end for the cost reporting period audited. LEAs may appeal audit findings in accordance with DHH appeal procedures.

3. The department shall adjust the affected LEA's payments no less than annually, when any reconciliation or final settlement results in significant underpayments or overpayments to any LEA. By performing the reconciliation and final settlement process, there shall be no instances where total Medicaid payments for services exceed 100 percent of actual, certified expenditures for providing LEA services for each LEA.

4. If the interim payments exceed the actual, certified costs of an LEA's Medicaid services, the department shall recoup the overpayment in one of the following methods:

- a. offset all future claim payments from the affected LEA until the amount of the overpayment is recovered;
- b. recoup an agreed upon percentage from future claims payments to the LEA to ensure recovery of the overpayment within one year; or

c. recoup an agreed upon dollar amount from future claims payments to the LEA to ensure recovery of the overpayment within one year.

5. If the actual certified costs of an LEA's Medicaid services exceed interim Medicaid payments, the department will pay this difference to the LEA in accordance with the final actual certification agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2761 (October 2013).

Kathy H. Kliebert
Secretary

1310#078

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Family Support/Subsidy Services—Licensing Standards (LAC 48:I.Chapter 59)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 48:I.Chapter 59 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 59. Family Support/Subsidy Services

§5901. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2762 (October 2013).

§5903. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2762 (October 2013).

§5905. Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2762 (October 2013).

§5907. Application Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5909. Subsidy Payments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5911. Monitoring

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5913. Time Limitation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5915. Appeals and Terminations:

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5917. Application Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5919. Review of Applications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5921. Issuance of a License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5923. Types of Licenses and Expiration Dates

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5925. Reapplication

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5927. Refusal, Revocation and Fair Hearing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5929. Terms of the Licensure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5931. Services for Different Handicaps

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5933. Quarterly Staffing Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5935. Licensing Inspections

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by

the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2763 (October 2013).

§5937. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5939. General Waiver

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5941. Family Support/Subsidy Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5943. General Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5945. Governing Body

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5947. Responsibilities of a Governing Body

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5949. Accessibility of Executive

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5951. Documentation of Authority to Operate

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5953. Administrative File

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5955. Organizational Communication

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5957. Accounting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5959. Confidentiality and Security of Files

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5961. Records—Administrative and Client

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5963. Program Description

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5965. Transportation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2764 (October 2013).

§5967. External Professional Service

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5969. Staff Plan

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5971. Nondiscrimination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5973. Recruitment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5975. Screening

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5977. Orientation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5979. Training

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5981. Evaluation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5983. Personnel Practices

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5985. Abuse Reporting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5987. Basic Rights

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5989. Self-Advocacy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5991. Advocacy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

§5993. Grievance Procedures for Clients

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380-451.

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), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2765 (October 2013).

Kathy H. Kliebert
Secretary

1310#079

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

Intermediate Care Facilities for Persons
with Developmental Disabilities
Reimbursement Rate Reduction
(LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

**Subpart 3. Intermediate Care Facilities for Persons with
Developmental Disabilities**

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32903. Rate Determination

A. - L. ...

M. Effective for dates of service on or after July 1, 2012, the per diem rates for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD) shall be reduced by 1.5 percent of the per diem rates on file as of June 30, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), LR 37:3028 (October 2011), LR 39:2766 (October 2013).

Kathy H. Kliebert
Secretary

1310#080

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

Personal Care Attendant Services—Licensing Standards
(LAC 48:I.Chapter 77)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 48:I.Chapter 77 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 77. Personal Care Attendant Services

§7701. Personal Care Attendant Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2766 (October 2013).

§7703. Responsibility for Care Planning

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2766 (October 2013).

§7705. Qualification of Team Members

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2766 (October 2013).

§7707. Basic Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987),

repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2766 (October 2013).

§7709. Initial Application Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2426 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7711. Surveys

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2427 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7713. Issuance of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2427 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7719. The Denial, Revocation or Non-Renewal of a License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2428 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7720. Notice and Appeal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2428 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7721. Terms of the Licensure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office

of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7723. Services for Different Handicaps

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7729. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7731. General Waiver

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7733. Personal Care Attendant Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7735. General Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2429 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2767 (October 2013).

§7736. Operational Requirements

Repealed.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2769 (October 2013).

§7781. Self-Advocacy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2770 (October 2013).

§7783. Advocacy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2770 (October 2013).

§7785. Grievance Procedures for Clients

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2770 (October 2013).

Kathy H. Kliebert
Secretary

1310#081

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Prosthetics and Orthotics
Reimbursement Rate Reduction
(LAC 50:XVII.501)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XVII. Prosthetics and Orthotics

Subpart 1. General Provisions

Chapter 5. Reimbursement

§501. Reimbursement Methodology

A. - F.1. ...

G. Effective for dates of service on or after July 1, 2012, the reimbursement for prosthetic and orthotic devices shall be reduced by 3.7 percent of the fee amounts on file as of June 30, 2012.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

AUTHORITY NOTE: Promulgated in accordance with R. S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), repromulgated LR 36:521 (March 2010), amended LR 36:1253 (June 2010), amended LR 36:2567 (November 2010), LR 39:2770 (October 2013).

Kathy H. Kliebert
Secretary

1310#082

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

Respite Care—Licensing Standards (LAC 48:I.Chapter 81)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 48:I.Chapter 81 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 81. Respite Care

§8101. Initial Application Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2432 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2770 (October 2013).

§8104. Surveys

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2433 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2770 (October 2013).

§8105. Issuance of a License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2433 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8111. The Denial, Revocation, or Non-Renewal of a License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2434 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8112. Notice and Appeal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8113. Terms of the License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8115. Services for Different Handicaps

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2435 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8121. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8123. General Waiver

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8125. Respite Care Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007,) repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8127. General Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2436 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8128. Operational Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2437 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

§8129. Program and Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2438 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2771 (October 2013).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2772 (October 2013).

§8151. Contact with Family and Collaterals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

§8153. Participation in Program Development

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

§8155. Disciplinary Safeguards

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

§8157. Furnishings and Equipment for Center Based

Respite Care

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

§8159. Play Space and Equipment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987),

repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

§8161. Health and Safety

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2439 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

§8165. Maintenance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2440 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

§8167. In or Out-of-Home

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:2440 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2773 (October 2013).

Kathy H. Kliebert
Secretary

1310#083

RULE

Department of Insurance Office of the Commissioner

Regulation 101—Registration and Regulation of Navigators
(LAC 37:XIII.Chapter 143)

Under the authority of the *Louisiana Insurance Code*, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 22:11, and R.S. 22:753, the Department of Insurance has adopted Regulation 101. The purpose of the regulation is to require the registration and provide for the regulation of all entities and all persons authorized by the U.S. Department of Health and Human Services to act as navigators for any affordable insurance exchange operating in this state.

**Title 37
INSURANCE**

Part XIII. Regulations

Chapter 143. Regulation 101—Registration and Regulation of Navigators

§14301. Purpose

A. The purpose of Regulation 101 is to implement a provision of Act 349 of the 2013 Regular Session of the Louisiana Legislature relative to the registration and regulation of navigators as authorized in R.S. 22:753.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2774 (October 2013).

§14303. Authority

A. Regulation 101 is promulgated pursuant to the authority granted in R.S. 22:11 and 22:753(H)(5).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2774 (October 2013).

§14305. Applicability and Scope

A. Regulation 101 is applicable to all entities and persons that receive either funding or certification from any state or federal governmental agency for the purposes of acting as a health insurance navigator for an affordable insurance exchange (also called a Health Insurance Marketplace) in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2774 (October 2013).

§14307. Definitions

A. As used in Regulation 101, the following terms shall have the meaning or definition as indicated herein.

Affordable Insurance Exchange—an exchange or marketplace established pursuant to the Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152.

Commissioner—*commissioner* of insurance for the state of Louisiana.

Navigator—any person or entity that receives a grant of funding or certification or other form of recognition or designation as a *navigator* by an affordable insurance exchange or by any state or federal governmental entity pursuant to 45 CFR §155 et seq., as authorized by §1311 of the Affordable Care Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2774 (October 2013).

§14309. Registration of Navigators

A. Each navigator must be registered with the commissioner.

B. Each navigator grantee shall complete and submit a registration form prescribed by the commissioner and in a manner directed by the commissioner within 10 days of the effective date of this regulation, or within 10 days of

certification or notice of a grant of funding to a navigator, whichever is earlier.

C. A navigator grantee shall append its registration form with a list of persons employed or associated with the entity that shall act or shall reasonably be expected to act as navigators individually, and shall submit sufficient proof of certification as a navigator. When such a navigator entity employs or associates with such persons not included in the appendix, the navigator shall submit an updated appendix to the commissioner within 10 days of the employment or association. Whenever a person listed on a submitted appendix ceases to be employed or associated with the navigator entity, or ceases to act in a capacity as a navigator, the entity shall submit an updated appendix to the commissioner within 10 days of such event.

D. No navigator shall be permitted to act as such in this state or to advertise such service unless such navigator has completed the registration process promulgated in Regulation 101.

E. In the event that any navigator, whether an entity or an individual, is decertified or in any other manner has its designation as a navigator revoked, altered, or suspended, such navigator shall immediately notify the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2774 (October 2013).

§14311. Required Education and Training

A. A navigator must complete initial education and training as prescribed by the U.S. Department of Health and Human Services prior to engaging in services as a navigator.

B. A navigator must complete all continuing education and training prescribed by the U.S. Department of Health and Human Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2774 (October 2013).

§14313. Prohibited Conduct

A. Pursuant to 45 CFR §155 et seq., no navigator shall:

1. engage in any activities that would require a health and accident insurance producer license;
2. offer advice or recommendations nor any form of endorsement of a particular health benefit plan or health and accident insurance product;
3. provide any services related to health benefit plans or health and accident insurance products offered outside of an affordable insurance exchange, except to the extent required by federal law or regulations;
4. accept any form of compensation or consideration of any kind whatever from a health insurance issuer or from a health and accident stop-loss issuer;
5. disclose any information obtained in the course of navigator activities where such information is confidential or protected from disclosure by law, including but not limited to personal identifiable information, protected health information, or income tax information; and
6. violate the standards of conduct or prohibitions relating to navigators as enumerated in 45 CFR §155.260 or other federal laws or regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2774 (October 2013).

§14315. Required Reports and Reporting

A. A navigator that is required to file annual and quarterly progress reports with the Centers for Medicare and Medicaid Services shall also file such reports with the commissioner within 10 days of filing with the appropriate federal office or agency.

B. A navigator that is required to file financial reports with the Centers for Medicare and Medicaid Services shall also file such reports with the commissioner within 10 days of filing with the appropriate federal office or agency.

C. A navigator shall report to the commissioner any regulatory action or other form of administrative action to which the navigator has been made subject to by state or federal administrative agencies. Such report shall be made to the commissioner within 10 days of the action.

D. The commissioner may require the furnishing of other information necessary and proper for the enforcement of Regulation 101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2775 (October 2013).

§14317. Enforcement

A. A navigator acting in violation of Regulation 101 or in violation of any applicable federal law or regulation pertaining to navigators shall be subject to reporting by the commissioner to the relevant federal regulatory agency responsible for navigator oversight.

B. No provision of Regulation 101 shall be interpreted to preclude other forms of enforcement against navigators in such cases where a navigator has violated other provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:753.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:2775 (October 2013).

James J. Donelon
Commissioner

1310#085

RULE

**Department of Natural Resources
Office of Coastal Management**

Mitigation (LAC 43:I.700 and 724)

Under the authority of R.S. 49:214.21-49:214.41 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., the Department of Natural Resources, Office of Coastal Management amends LAC 43:700 and 724 relative to the rules and procedures for mitigation.

This Rule amendment is intended to assist in ensuring that the Office of Coastal Management's regulatory practices regarding its mitigation program are consistent with the

state's Comprehensive Master Plan for a Sustainable Coast, and simplifying the present mitigation rules to reduce the burden on limited state resources.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter A. Definitions

§700. Definitions

* * *

Consistency Authorization—a letter or other formal notification stating that the Office of Coastal Management has found that the proposed activity is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended by the Department of Natural Resources, Office of the Secretary, LR 35:2183 (October 2009), amended by the Department of Natural Resources, Office of Coastal Management, LR 39:2775 (October 2013).

Subchapter C. Coastal Use Permits and Mitigation

§724. Rules and Procedures for Mitigation

A. General. This Section provides general procedures for avoiding and minimizing adverse impacts identified in the permit review and consistency authorization review processes, restoring impacted sites when appropriate, quantifying anticipated unavoidable coastal resources ecological value losses, requiring appropriate and sufficient compensatory mitigation, reviewing and establishing mitigation banks and/or in-lieu-fee programs, and evaluating and processing requests for variances from the compensatory mitigation requirement.

B. Avoidance, Minimization, and Restoration of, and Compensation for, Ecological Losses of Coastal Resources Values

1. The secretary shall not grant a coastal use permit or issue a general permit or consistency authorization for an individual activity unless the permit process includes evaluation of the following:

a. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to avoid and minimize those adverse impacts identified during the permit review and consistency review processes;

b. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to restore impacted sites when appropriate; and

c. a requirement for compensatory mitigation to offset any net loss of coastal resources ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts (i.e., unavoidable net loss of coastal resources ecological value), unless a variance is granted pursuant to §724.K.

2. If the secretary determines that a proposed activity would comply with §§701-719 and would not result in a net

loss of coastal resources ecological values, the secretary shall not require compensatory mitigation.

3. When a proposed oil and gas exploration site would impact coastal resources, the determination regarding the avoidance and minimization of adverse impacts and impact site restoration for the proposed exploration activity and its associated production and transmission activities shall be made through the geologic review procedure. Additionally, the geologic review procedure will be used if:

- a. there are environmentally or administratively sensitive features impacted;
- b. the project appears likely to have significant secondary impacts (e.g., saltwater intrusion into adjacent wetlands) that could be avoided via alternate locations; or
- c. the secretary determines it is necessary.

4. In addition to the requirement contained in §724.B.3, the secretary may utilize the geologic review procedure, when requested by the Louisiana Department of Wildlife and Fisheries (LDWF), to render the determination regarding avoidance and minimization of adverse impacts, and impact restoration and mitigation, for proposed oil and gas exploration activities and associated production and transmission activities which would:

- a. occur within 1/4 mile of an oyster seed ground, oyster seed reservation, or a public oyster harvesting area;
- b. impact other oyster or other shell reef(s);
- c. occur within the boundaries of a wildlife refuge or wildlife management area owned or managed by LDWF;
- d. occur within an area designated as a natural and scenic river in accordance with the provisions of R.S. 56:1840 et seq.; or
- e. impact unique and/or sensitive coastal habitats (e.g., salt domes, beaches, dunes, reefs, Cheniers, etc.).

C. Quantification of Anticipated Net Gains and Unavoidable Net Losses of Ecological Value

1. Anticipated net gains and unavoidable net losses of coastal resources ecological value shall be quantified as cumulative habitat units (CHUs) or average annual habitat units (AAHUs), whichever is most appropriate. For wetlands, there are several evaluation methods, for other coastal resources, appropriate accepted evaluation methods will be used where practical.

2. CHUs represent the total number of habitat units gained or lost over the life of a project, where net gain or net loss of coastal resources ecological value = (sum of CHUs produced in a future-with-project scenario) - (sum of CHUs produced in a future-without-project scenario).

3. AAHUs represent the annualized number of habitat units gained or lost as a result of a project where, net gain or net loss of coastal resources ecological value = (AAHUs produced in a future-with-project scenario) - (AAHUs produced in a future-without-project scenario). AAHUs = (sum of CHUs for a given scenario) / (project years).

4. Gains and unavoidable losses of ecological value will be determined as follows:

- a. for marsh habitats, the June 2009 (or later revision when appropriate), version of the Wetland Value Assessment Methodology Coastal Marsh Community Models (WVA); or
- b. for bottomland hardwoods and fresh swamp, the January 10, 1994, or later version of "Habitat Assessment

Models for Fresh Swamp and Bottomland Hardwoods Within the Louisiana Coastal Zone" (Model).

5. The secretary may use any certified or accepted peer-reviewed and/or authored—habitat evaluation methodology, or a combination of an appropriate habitat evaluation methodology and best professional judgment to determine net gains and unavoidable net losses of ecological value.

D. - F.12. ...

G. Advanced Mitigation Projects

1. The secretary may consider proposals by federal and state agencies, local governing bodies, and private entities to implement pre-approved mitigation measures. Any entity desiring to implement pre-approved mitigation measures shall be required to abide by all requirements and conditions pursuant to §724.J.

2. An applicant may implement a pre-approved mitigation measure to satisfy the compensatory mitigation requirements of a proposed activity or to offset losses caused by a future project impact.

3. The secretary shall determine the acceptability of a pre-approved mitigation measure(s) in accordance with §724.J.

H. Individual Compensatory Mitigation Measures

1. A permit applicant may implement an individual mitigation measure or measures to satisfy the compensatory mitigation requirements of a proposed activity.

2. The secretary shall determine the acceptability of an individual compensatory mitigation measure(s) in accordance with §724.J.

3. The sufficiency of an individual mitigation measure or measures shall be evaluated consistent with the rules and procedures for mitigation provided elsewhere in this section, best professional judgment, or a combination thereof.

4. If an individual compensatory mitigation measure(s) for any one permitted activity fails more than once, the applicant shall be required to purchase credits from a mitigation bank approved in accordance with §724.F or an approved in-lieu-fee program to satisfy all remaining mitigation obligations associated with the permitted activity.

5. The permit applicant shall be responsible for the monitoring of the mitigation measure and shall submit monitoring reports to the secretary at years one, three, five, and every five years for the remainder of the determined project life to be audited by staff to ensure compliance and perform monitoring as required.

a. The secretary may establish a different reporting schedule that is consistent with the current reporting requirements for mitigation banks so that the reporting requirements for individual compensation measures are equivalent to the reporting requirements of mitigation banks of the same habitat type and hydrologic basin.

b. These monitoring reports shall include but are not limited to the following:

- i. on the ground photographs taken during the growing season depicting a completed project with the photo date and approximate scale noted;
- ii. a detailed narrative summarizing the condition of the project and all regular maintenance activities;
- iii. a drawing based upon the site plan that depicts topography with supporting elevation tables, sampling plots,

and permanent photo stations; results of tidal monitoring, including mean high and low water elevations;

iv. results of vegetation survey including visual estimates of percentage of overall cover and percent cover by each species, percentage exotic vegetation, total percentage facultative and total percentage upland species in each vegetation layer,

v. survival rate of planted vegetation, an estimate of natural revegetation, and a qualitative estimate of plant vigor.

c. The permit applicant must submit a final report.

I. Monetary Contributions to the Louisiana Wetlands Conservation and Restoration Fund

1. Compensatory mitigation may be accomplished by monetary contribution to the Louisiana Wetlands Conservation and Restoration Fund (Coastal Mitigation Account).

2. Such monetary contributions shall be used to offset anticipated unavoidable net losses of ecological values and shall be selected as the compensatory mitigation option when it is determined that more suitable options are not available to produce the required habitat benefits and replace those habitat units consistent with the Louisiana's Comprehensive Master Plan for a Sustainable Coast.

3. The secretary shall determine the amount of the monetary contribution. In determining the amount of the monetary contribution, the secretary may consider any of the following factors: state, federal, or other habitat costs (CWPPRA, CIAP, State Surplus), comparative fee programs, and other in-lieu fee programs. The secretary shall maintain an accurate estimate based on actual construction costs for coastal wetland restoration projects and notify the Department of the Army (DA), resource agencies, and all stakeholders of any modifications to the mitigation trust fund contribution amounts.

J. - J.6.j. ...

K. Variances from Compensatory Mitigation Requirements

1. Pursuant to the remainder of this Section, the secretary may grant a full or partial variance from the compensatory mitigation requirement (variance) when a permit applicant or consistency authorization applicant has satisfactorily demonstrated to the secretary:

a. that the required compensatory mitigation would render impracticable an activity proposed to be permitted; and

b. that such activity has a clearly overriding public interest.

2. Variance Request Requirements

a. Following the application of §724.B; development of a compensatory mitigation option(s) pursuant to §724.J; and presentation by the secretary (in accordance with §723.C.8.b) of a draft permit, including conditions for compensatory mitigation, the permit applicant may file a variance request with the secretary.

b. The variance request must be filed and resolved prior to initiation of the proposed activity.

c. The variance request must be filed in writing and include the following:

i. a detailed statement explaining why the proposed compensatory mitigation requirement would

render the proposed activity impracticable, including supporting information and data; and

ii. a detailed statement demonstrating that the proposed activity has a clearly overriding public interest by explaining why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, including supporting information and data.

d. As part of the requirements of §724.K.2.c, requests for variances for mineral exploration, extraction, and production activities shall include production projections, including supporting geologic and seismographic information; a projected number of new jobs; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

e. As part of the requirements of §724.K.2.c, requests for variances for mineral transportation activities shall include information regarding the amount of product proposed to be transported; the destination of the product; a projected number of new jobs and their location; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

f. As part of the requirements of §724.K.2.c, requests for variances for flood protection facilities shall include the following information:

i. a detailed description of the existing infrastructure which would be protected by the flood protection facility, including public facilities (e.g., roads, bridges, hospitals, etc.), residential areas (including approximate number of homes and associated residents), industries, businesses, and include cost benefit ratios;

ii. detailed drawings or photographic documentation depicting the locations of the above infrastructure components;

iii. a detailed description of the extent and severity of past flooding problems and projections of potential damages due to future flooding events; and

iv. a description of nonstructural and structural flood protection and reduction measures which have been undertaken or implemented in the past, or are reasonably expected to occur in the future.

g. As part of the requirements of §724.K.2.c, all requests for variances shall include cost estimates for implementing the proposed project and performing compensatory mitigation.

h. The request shall be accompanied with a nonrefundable filing and hearing fee of \$250.

3. Review and Notification by the Secretary

a. The secretary shall review a variance request and inform the applicant of its completeness within 15 days of receipt.

b. If the variance request is not complete or if additional information is needed, the secretary shall request from the applicant, the additional information necessary to evaluate and process the request. If the applicant fails to respond to such request within 30 days, the secretary may advise the applicant that his request will be considered withdrawn. If the request is considered withdrawn, to reinstate the request, the applicant will be required to

resubmit the request including any previously requested additional information, accompanied with an additional nonrefundable filing and hearing fee of \$250.

c. The secretary shall not issue a variance prior to publishing a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement", and accepting and considering public comments.

d. Within 30 days of the secretary's acceptance of the variance request as complete, the secretary shall review the request, considering the criteria set forth in §724.K.1, and either:

i. notify the applicant of the secretary's intention to deny the request, including his rationale; or

ii. determine that the variance request warrants further consideration and publish a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

e. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall be published in the official state journal, and distributed to Joint Public Notice and all persons that submitted comments on the original public notice, and provided to the local governing authority of the parish or parishes where the proposed activity would take place.

f. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall contain the following:

i. name and address of the applicant;

ii. the location and description of the proposed activity;

iii. a description of the area to be directly impacted (acres and habitat types) and quantification of anticipated unavoidable net losses of ecological value;

iv. a description of the compensatory mitigation plan proposed as a condition of permit issuance;

v. a description of the nature and extent of the variance;

vi. a summary of the information presented by the applicant in fulfillment of §724.K.2.c-g;

vii. notification that public comments, including requests for public hearings, will be accepted for 25 days from the date of publication of the "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

4. Public Hearings on Variance Requests

a. A public hearing shall be held when:

i. requested by the applicant following the secretary announcing his intention to deny a variance request;

ii. the secretary determines that a public hearing is warranted, following a review of comments received during the period described in §724.K.3.f.vii; or

iii. there is significant public opposition to the variance request, or there have been requests from legislators or from governmental agencies or other authorities, or in controversial cases involving significant economic, social, or environmental issues.

b. Public hearings shall be conducted in accordance with §727.

5. Final Variance Decision

a. The secretary shall issue a final variance decision based on full consideration of the criteria set forth in

§724.J.1, information submitted by the applicant, comments received during the public comment period, and comments received at the public hearing if one is held. A "statement of finding" described in §724.K.5.b shall be prepared:

i. within 15 days of the closing of the public comment period if the secretary determines that a public hearing is not warranted; or

ii. within 15 days of the public hearing if one is held.

b. The secretary shall prepare a signed final "statement of finding" which explains the reasons for denying a variance or describes why the proposed compensatory mitigation requirement would have rendered the proposed activity impracticable, describes why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of requiring compensation for wetland values lost as a result of the activity; and describes the nature and extent of the granted variance. This statement shall be part of the permit record, available to the public, and attached to the granted permit.

c. The final variance decision is subject to reconsideration as described at R.S. 49:214.35.

6. Duration of Variance

a. A variance shall be valid only for the original permit recipient. Any party receiving a transferred permit may seek a variance, through the procedures established by §724.K.2-5.

b. A variance shall be valid for the initial terms of the permit to which it is specifically related, unless the variance is modified, or revoked in accordance with §724.K.7.

c. The secretary may extend a variance, in accordance with §723.D.5, concurrently with the extension of the permit to which it is specifically related.

7. Modification or Revocation of Variance

a. If requested by the applicant, the secretary shall consider modifying a variance, according to the procedures described in §724.K.2-5.

b. The secretary may revoke a variance, if:

i. there are inaccuracies in the information furnished by the applicant during the permit or variance review period;

ii. there is any violation of the conditions and limitations of the permit to which the variance is specifically related;

iii. there is any violation of the conditions and limitations of the variance;

iv. the applicant misrepresented, without regard to intent, any material facts during the variance or permit review period; or

v. the actual public interests of the activity turn out to be significantly less than that estimated by the applicant in its statements filed in association with the variance request review.

c. The procedure for revoking a variance shall be as follows.

i. The secretary shall, in writing, inform the variance holder that revocation is being considered, providing reasons for the potential revocation and advising the variance holder that he will be given, if requested within 10 days from receipt of the notice, an opportunity to respond to the reasons for potential revocation.

ii. After consideration of the variance holder's response, or if no response is received, the secretary shall provide written notice to the variance holder, allowing the variance to remain valid or explaining newly imposed compensatory mitigation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Management, LR 39:2775 (October 2013).

Stephen Chustz
Secretary

1310#022

RULE

Department of Public Safety and Corrections Corrections Services

Administrative Remedy Procedure (LAC 22:I.325)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, hereby amends the contents of Section 325, Administrative Remedy Procedure.

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

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

§325. Administrative Remedy Procedure

A. Purpose—to constitute the department's "administrative remedy procedure" for offenders as a regulation.

B. Applicability—deputy secretary, chief of operations, regional wardens, wardens, and sheriffs or administrators of local jail facilities. Each unit head is responsible for ensuring that all unit written policies and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that all offenders and employees have reasonable access to and comply with the department's "administrative remedy procedure" through which an offender may seek formal review of a complaint relating to most aspects of his incarceration. Offenders housed in local jail facilities shall also be afforded reasonable access to a grievance remedy procedures.

1. Revisions will be accomplished through this regulation under the signature of the secretary.

D. Administrative Remedy Procedure—Purpose

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institutions a formal grievance mechanism for use by all offenders committed to the custody of the department. The process bears the name Administrative Remedy Procedure (ARP). Offenders are required to use the procedure before they can proceed with a suit in federal and state courts.

2. Corrections Services has established the administrative remedy procedure through which an offender

may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory or any other form of relief authorized by law and by way of illustration, includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes, including grievances such as offender requests for accommodations under the Americans with Disabilities Act and for complaints of sexual abuse under the prison rape elimination act.

3. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

E. Definitions

ARP Screening Officer—a staff member, designated by the warden, whose responsibility is to coordinate and facilitate the administrative remedy procedure process.

Days—calendar days.

Emergency Grievance—a matter in which disposition within the regular time limits would subject the offender to a substantial risk of personal injury or cause other serious and irreparable harm to the offender.

Grievance—a written complaint by an offender on the offender's own behalf regarding a policy applicable within an institution, a condition within an institution, an action involving an offender of an institution or an incident occurring within an institution.

NOTE: The pronouns "he" and "his" as used herein are for convenience only and are not intended to discriminate against female employees or offenders.

F. General Policy

1. Offenders may request administrative remedies to situations arising from policies, conditions or events within the institution that affect them personally.

2. All offenders, regardless of their classification, impairment or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers (including hearing and visual impairments).

3. There are procedures already in place within all DPS and C institutions which are specifically and expressly incorporated into and made a part of this administrative remedy procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims.

a. General Procedures

i. Notification of Procedures

(a). Offenders must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers.

(b). The procedures shall be posted in writing in areas readily accessible to all offenders.

(c). All offenders may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

ii. Nothing in this procedure should serve to prevent or discourage an offender from communicating with the warden or anyone else in the department. All forms of

communication to the warden will be handled, investigated and responded to as the warden deems appropriate.

iii. The requirements set forth in this document for acceptance into the administrative remedy procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review.

iv. The following matters shall not be appealable through this administrative remedy procedure:

(a). court decisions and pending criminal matters over which the department has no control or jurisdiction;

(b). Board of Pardons and Parole decisions (under Louisiana law, these decisions are discretionary and may not be challenged);

(c). sex offender assessment panel recommendations;

(d). lockdown review board decisions (offenders are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The board's decision may not be challenged. However, a request for administrative remedy on lockdown review board hearings can be made in the following instances):

(i) that no reasons were given for the decision of the board;

(ii) that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20 day grace period attached hereto, due to administrative scheduling problems of the board; therefore, a claim based on this ground will not be valid until 110 days have passed and no hearing has been held;

(e). warden's decision regarding restoration of good time pursuant to established policy and procedures.

v. A request for accommodation under the Americans with disabilities act made using the administrative remedy procedure process and the resolution of the offender's request shall be deemed to be exhaustion of the administrative procedure. The initiation of the process and deadlines and time limits stated in the administrative remedy procedure remain applicable.

vi. If an offender registers a complaint against a staff member, that employee shall not be involved in the decision making process on the request for remedy. However, this shall not prevent the employee from participating at the step one level, since this employee may be the best source from which to begin collecting information on an alleged incident.

vii. At each stage of decision and review, offenders will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

viii. Prior to filing a grievance in federal or state court, unless specifically excepted by law, the offender must exhaust all administrative remedies. Exhaustion occurs:

(a). when the relief requested has been granted;

(b). when the second step response has been issued; or

(c). when the grievance has been screened and rejected for one of the reasons specified in Subsection I, Grievance Screening.

ix. If an offender submits multiple requests during the review of a previous request, they will be logged and set aside for handling at such time as the request currently in the system has been exhausted at the second step or until time limits to proceed from the first step to the second step have lapsed. The warden may determine whether a letter of instruction to the offender is in order.

x. In cases where a number of offenders have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the offender who filed the initial request. Copies of the decision sent to other offenders who filed requests simultaneously regarding the same issue will constitute a completed action. All such requests shall be logged separately.

xi. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution shall complete the processing through the first step response. The warden of the receiving institution shall assist in communication with the offender.

xii. If an offender is discharged before the review of an issue is completed that affects the offender after discharge, or if he files a request after discharge on an issue that affects him after discharge, the institution shall complete the processing and shall notify the offender at his last known address. All other requests shall be considered moot when the offender discharges and the process shall not be completed.

xiii. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

(a). Reprisals of any nature are prohibited. Offenders are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

(b). The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined accordingly.

b. Maintenance of Records

i. Administrative remedy procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

ii. All reports, investigations, etc., other than the offender's original letter and responses, are prepared in anticipation of litigation, and are prepared to become part of the attorney's work product for the attorney handling any anticipated future litigation of this matter and are therefore confidential and not subject to discovery.

iii. Records shall be maintained as follows.

(a). An electronic log shall document the nature of each request, all relevant dates and disposition at each step.

(i). Each institution shall submit reports on administrative remedy procedure activity in accordance with established policy and procedures.

(ii). Cross references and notations shall be made on other appropriate databases such as ADA and PREA as may be warranted.

(b). Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at headquarters.

(c). Records shall be kept four years following final disposition of the request in accordance with the department's records retention schedule.

c. Annual Review. The warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the administrative remedy procedure from offenders and staff. A report with the results of such review shall be provided to the chief of operations/office of adult services no later than January 31 of each year.

G. Initiating a Formal Grievance

1. Offenders are encouraged to resolve their problems within the institution informally, before initiating the formal process. Informal resolution is accomplished through communication with appropriate staff members. If an offender is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process. In order to ensure their right to use the formal procedure, a request to the warden shall be made in writing within a 90 day period after an incident has occurred. This requirement may be waived when circumstances warrant. The warden or designee shall use reasonable judgment in such matters. There is no time limit imposed for grievances alleging sexual abuse.

a. Initiating a Formal Grievance

i. The offender commences the process by completing a request for administrative remedy or writing a letter to the warden, in which he briefly sets out the basis for his claim, and the relief sought. For purposes of this process, a letter is:

(a). any form of written communication which contains the phrase: "This is a request for administrative remedy" or "ARP;" or

(b). request for administrative remedy at those institutions that wish to furnish forms for commencement of this process.

ii. The institution is not required to be responsible for furnishing the offender with copies of his letter of complaint. It is the offender's responsibility for obtaining or duplicating a copy of his letter of complaint through established institutional procedures and for retaining the copy for his own records. The form or original letter will become a part of the administrative record and will not be returned to the offender.

iii. Original letters or requests to the warden should be as brief as possible. Offenders should present as many facts as possible to answer all questions (who, what, when, where and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the offender with a request for clarity or summarization on one additional page. The deadline for this request begins on the date the resubmission is received in the warden's office.

iv. No request for administrative remedy shall be denied acceptance into the administrative remedy procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase, "This is a request for administrative remedy or ARP."

b. Withdrawing a Formal Grievance. If, after filing a formal request for administrative remedy, an offender receives a satisfactory response through informal means, the offender may request (in writing) that the warden cancel the administrative remedy request.

H. Emergency or Sensitive Issues

1. In instances where the offender's request is of an emergency or sensitive issue as defined below, the following procedures will apply.

a. If an offender feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request to determine the appropriate corrective action to be taken. All emergency requests shall be documented on an unusual occurrence report by the appropriate staff member.

i. Abuse of the emergency review process by an offender shall be treated as a frivolous or malicious request and the offender shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

b. If the offender believes the complaint is sensitive and that he would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the secretary through the chief of operations/office of adult services. The offender must explain, in writing, his reason for not filing the complaint at the institution.

i. If the chief of operations/office of adult services agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint to the warden's office. The offender shall then have five days from the date the rejection memo is received in the warden's office to submit his request through regular channels (beginning with the first step if his complaint is acceptable for processing in the administrative remedy procedure).

c. If an emergency complaint alleges that the offender is subject to a substantial risk of imminent sexual abuse, the grievance shall be sent immediately to the unit's PREA compliance manager who shall then immediately notify the unit's PREA investigator. The unit PREA compliance manager shall provide an initial response within 48 hours of receipt of the grievance outlining any corrective actions warranted and shall issue a first step response within five days. If the offender has been secured and is no longer in danger or imminent harm, the grievance procedure shall proceed as outlined within the deadlines and time limits stated in the administrative remedy procedure.

I. Grievance Screening

1. The ARP screening officer shall screen all requests prior to assignment to the first step. The screening process should not unreasonably restrain the offender's opportunity to seek a remedy.

a. The ARP screening officer shall furnish the offender with notice of the initial acceptance or rejection of the request to advise that his request is being processed or has been rejected.

i. If the request is processed, the warden, or designee, will assign a staff member to conduct further fact-finding and/or information gathering prior to rendering his response.

ii. If a request is rejected, it must be for one of the following reasons, which shall be noted on the request for administrative remedy or on the offender's written letter.

(a). This matter is not appealable through this process, such as:

- (i). court decisions;
- (ii). Board of Pardons and Parole decisions;
- (iii). sex offender assessment panel recommendations;
- (iv). lockdown review board (refer to Subsection F, General Policy).

(b). There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

- (i). disciplinary matters;
 - (ii). lost property claims.
- (c). It is a duplicate request.
- (d). The complaint concerns an action not yet taken or a decision which has not yet been made.
- (e). The offender has requested a remedy for another offender (unless the request is a third party report of an allegation of sexual abuse).

(f). The request was not written by the offender and a waiver was not approved. The only exception is if the offender has alleged sexual abuse. In this instance, the offender:

- (i). may seek help from a third party to file the initial grievance;
- (ii). must attach written authorization for the named third party to submit the grievance on the offender's behalf; and
- (iii). must personally pursue any remaining subsequent steps in the process.

(g). The offender has requested a remedy for more than one incident (a multiple complaint) unless the request is a report of an allegation of sexual abuse.

(h). Established rules and procedures were not followed.

(i). There has been a time lapse of more than 90 days between the event and the initial request, unless waived by the warden (some exceptions may apply, e.g., time computation issues, ADA and PREA issues, on-going medical issues, etc.)

(j). The offender does not request some type of remedy unless the request pertains to an allegation of sexual abuse, in which case stopping the abuse is the implied request for remedy.

b. Once an offender's request is accepted into the procedure, he must use the manila envelope that is furnished to him with the first step response to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP screening officer.

J. Grievance Processing

1. The following process and time limits shall be adhered to in processing any ARP request.

a. First Step (time limit 40 days/5 days for PREA)

i. If an offender refuses to cooperate with the inquiry into his allegation, the request may be denied by

noting the lack of cooperation on the appropriate step response and returning it to the offender.

ii. The warden shall respond to the offender within 40 days/5 days for PREA from the date the request is received at the first step utilizing the first step response.

iii. If the offender is not satisfied with the decision rendered at the first step, he should pursue his grievance to the secretary, through the chief of operations/office of adult services via the second step.

iv. For offenders wishing to continue to the second step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. It is not necessary to rewrite the original letter of request as it will be available to all reviewers at each step of the process.

b. Second Step (time limit 45 days)

i. An offender who is dissatisfied with the first step response may appeal to the secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP screening officer within five days of receipt of the decision.

ii. A final decision will be made by the secretary or designee and the offender shall be sent a response within 45 days from the date the request is received at the second step utilizing the second step response.

iii. A copy of the secretary's decision shall be sent to the warden.

iv. If an offender is not satisfied with the second step response, he may file suit in district court. The offender must furnish the administrative remedy procedure number on the court documents.

c. Deadlines and Time Limits. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process.

i. An offender may request an extension in writing of up to five days in which to file at any stage of the process.

(a). This request shall be made to the ARP screening officer for an extension to initiate a request; to the warden for the first step response and to the secretary through the chief of operations/office of adult services for the second step response.

(b). The offender must certify valid reasons for the delay, which must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each step, along with the substantive issue of the complaint.

ii. The warden may request permission for an extension of time not more than five days from the chief of operations/office of adult services for the step one review/response.

(a). The offender must be notified in writing of such an extension.

(b). Cumulative extensions of time shall not exceed 25 days unless the grievance concerns sexual abuse, in which case an extension of time up to 70 days may be made.

(c). If the extension is approved, written communication shall be sent to the offender of the extension and a date by which the decision shall be rendered. Reasons

for the extension of time for unusual circumstances shall be maintained in the administrative record.

K. Monetary Damages

1. The Department of Public Safety and Corrections based upon credible facts within a grievance or complaint filed by an offender, may determine that such an offender is entitled to monetary damages where monetary damages are deemed by the department as appropriate to render a fair and just remedy.

a. Upon a determination that monetary damages should be awarded, the only remaining question is quantum or the determination as to the dollar amount of the monetary damages to be awarded.

b. The determination of quantum shall be made after a formal review by the case contractor for the Office of Risk Management within the Division of Administration. The determination reached by the case contractor shall be submitted to the Office of Risk Management and the Department of Public Safety and Corrections for a final decision.

c. If a settlement is reached, a copy of the signed release shall be given to the warden on that same date.

L. Lost Property Claims

1. The purpose of this section is to establish a uniform procedure for handling lost property claims filed by offenders in the custody of the Department of Public Safety and Corrections. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this procedure and for advising offenders and affected employees of its contents.

a. When an offender suffers a loss of personal property, he may submit a lost personal property claim to the warden or designee. The claim shall include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item and any proof of ownership or value of the property available to the offender. All claims for lost personal property must be submitted to the warden or designee within 10 days of discovery of the loss.

i. Under no circumstances will an offender be compensated for an unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to or gambling with other offenders.

b. The warden or designee shall assign an employee to investigate the claim. The investigative officer shall investigate the claim fully and will submit his report and recommendations to the warden or designee.

c. If a loss of an offender's personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed in accordance with the following procedures.

i. Monetary:

(a). the warden or designee shall recommend a reasonable value for the lost personal property as described on the lost personal property claim. The state assumes no liability for any lost personal clothing. Liability shall be pursuant to established policy and procedures;

(b). a lost personal property claim response and agreement shall be completed and submitted to the offender for his signature; and

(c). the claim shall be submitted to the chief of operations/office of adult services for review and final approval.

ii. Non-monetary:

(a). the offender is entitled only to state issue where state issued items are available;

(b). the warden or designee shall review the claim and determine whether or not the institution is responsible;

(c). a lost personal property claim response shall be completed and submitted to the offender for his signature;

(d). an agreement shall be completed and submitted to the offender for his signature when state issue replacement has been offered.

d. If the warden or designee determines that the institution and/or its employees are not responsible for the offender's loss of property, the claim shall be denied, and a lost personal property claim response shall be submitted to the offender indicating the reason. If the offender is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on the lost personal property claim response and submitting it to the ARP screening officer within five days of receipt. The screening officer shall provide the offender with an acknowledgment of receipt and date forwarded to the chief of operations/office of adult services. A copy of the offender's original lost personal property claim and lost personal property claim response and other relevant documentation shall be attached.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:857 (April 2002), amended LR 28:1993 (September 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 37:3275 (November 2011), LR 39:2779 (October 2013).

James M. Le Blanc
Secretary

1310#029

RULE

**Department of Public Safety and Corrections
Office of State Police**

**Hazardous Material Information Development
Preparedness and Response Act (LAC 33:V.10111)**

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 30:2361 et seq., hereby amends its rules regulating hazardous materials to exempt a chemical facility's controlled release of acetylene, butane, butylene, cyclopropane, ethylamine, ethylene, hydrogen, methyl ether, propane, or propylene from the reporting requirements and includes certain facilities with continuous emissions

monitoring systems for sulfur dioxide emissions in the category of facilities subject to special reportable quantities for sulfur dioxide.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 2. Department of Public Safety and

Corrections—Hazardous Materials

Chapter 101. Hazardous Material Information

Development, Preparedness and

Response Act

§10111. Release and Incident Reporting

A. - D.4. ...

* * *

E. Exceptions to Reportable Quantities—Special Circumstances

1. The following special circumstances have been identified by the department and the following specific reportable quantities shall apply.

a. ...

b. Petroleum refinery and chemical manufacturing facilities which operate flaring systems as part of their manufacturing process, and any combustion unit operating with a continuous emissions monitoring system for sulfur dioxide emissions, shall have the following reportable quantities:

b.i. - d. ...

e. The controlled release of natural gas, acetylene, butane, butylene, cyclopropane, ethylamine, ethylene, hydrogen, methyl ether, propane, or propylene for maintenance, the start up or shut down of industrial equipment, or other purposes is considered a permitted release and is not reportable provided the release cannot be reasonably expected to affect the public safety beyond the boundaries of the facility.

E.1.f. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2361 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 12:327 (May 1986), amended LR 13:184 (March 1987), LR 13:761 (December 1987), LR 14:803 (November 1988), LR 16:975 (November 1990), LR 17:610 (June 1991), LR 27:861 (June 2001), LR 34:882 (May 2008), LR 39:2784 (October 2013).

Jill Boudreaux
Undersecretary

1310#016

RULE

Department of State Commercial Division Notary Division

Notaries Public (LAC 46:XLVI.Chapter 1)

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and under the authority of R.S. 35:1 et seq., and R.S. 36:742, the secretary of state has adopted LAC Title 46 Part XLVI to provide regulations for notaries public in the state of Louisiana.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVI. Notaries Public

Chapter 1. Notaries Public

§101. Qualifications

A. Any resident citizen or alien of the state, 18 years of age or older, may be appointed a notary public in and for the parish in which he resides provided that he/she meets the requirements established by R.S. 35:191(C).

B. The applicant is required to complete an application to qualify form requiring the applicant to:

1. be a citizen or resident alien of the state;

2. be 18 years of age or older;

3. be registered to vote in the parish in which he seeks commission;

4. attest to his good moral character, integrity and sober habits;

5. must not be under an order of interdiction or is incapable of serving because of mental infirmity; and

6. must not have been convicted of a felony or has been pardoned if convicted.

C. The applicant must be able to read, write, speak, and be sufficiently knowledgeable of the English language. In addition, he must have one of the following:

1. received a high school diploma;

2. received a diploma for completion of a home study program approved by the State Board of Elementary and Secondary Education; or

3. been issued a high school equivalency diploma after successfully completing the test of General Education Development (GED).

D. The qualifying application fee is shown in §129.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:191 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2784 (October 2013).

§103. Applications

A. notary applicant must be qualified by the notary division in the office of the secretary of state and must take and pass the Louisiana state notary examination (referred to as "notary exam"), unless the applicant is licensed to practice law in Louisiana.

B. The applicant must complete an application to qualify form and send it to the notary division in the secretary of state's office. Once the application to qualify form has been approved by the secretary of state's office, the applicant can register to take the notary exam by:

1. registering online at the secretary of state's website using a credit card; or

2. completing the examination registration form and:

a. attaching a check or money order made payable to the secretary of state and mailing the examination registration form to the notary division; or

b. completing a credit card cover sheet and faxing or emailing the sheet with the examination registration form to the notary division.

C. To file online, the applicant must contact the notary division to obtain his access code by emailing notaries@sos.la.gov or by calling (225) 922-0507.

D. The registration fee to take the notary exam is shown in §129.

E. Deadlines for submitting application to qualify and examination registration form are listed on the secretary of state's website notary division.

F. The notary exam is given twice a year on the first Saturday in June and December. If the date falls on a state holiday, the notary exam will be given on the next non-holiday Saturday. The Office of Assessment and Evaluation within Louisiana State University conducts the notary exams regionally on behalf of the secretary of state's office.

G. Any notary public commissioned by passing a parish notary exam can take the notary exam to obtain statewide jurisdiction. Failure to pass the notary exam shall have no effect on the status of the commission of the notary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:191, R.S. 35:191.1, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2784 (October 2013).

§105. Study Guide

A. The official study guide for the notary exam is "The Fundamentals of Louisiana Notarial Law and Practice."

B. The cost to purchase the study guide is shown in §129 and is non-refundable.

C. The study guide can be purchased by:

1. ordering online at the secretary of state's website using a credit card;

2. completing an order form, attaching a check or money order made payable to the secretary of state, and mailing to the notary division;

3. completing an order form and providing a credit card number and faxing or emailing to the notary division; or

4. visiting the notary division's customer service counter at the secretary of state's office at 8585 Archives Drive, Baton Rouge, LA during office hours of 8 a.m. to 4:30 p.m.

D. The study guide is sent via U.S. mail on the day of receipt of the order if received before 12:30 p.m. Orders received after 12:30 p.m. will be mailed the next business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:191.1 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2785 (October 2013).

§107. Courses

A. Applicants are not required by law to take a course or instruction class in order for an applicant to take the notary exam.

B. Although the secretary of state does not recommend particular courses or instructors, the department does maintain a list of registered and bonded notary exam preparatory course providers.

C. All course providers, except an educational institution listed in R.S. 35:191.4(D), shall annually post a bond guarantee by a commercial surety company licensed to do business in Louisiana with the secretary of state in the amount of \$25,000.

D. Beginning February 8, 2015, all persons providing notary examination preparatory education and instruction must be a notary public with statewide notarial authority.

E. Each provider must submit an annual registration statement to the secretary of state on or before January 1 of each year on a form provided by the secretary of state. In addition, each provider shall submit a semiannual report to

the secretary of state on or before June 30 and December 31 listing the name and address of each person who received a course or courses of instruction or study from the provider for the training and instruction for the notary exam required by the secretary of state during the time covered by the report.

F. Pursuant to R.S. 35:191.4(F), if a provider does not submit an annual report or the annual report is not submitted timely, penalties may be imposed up to \$1,000 for each day the provider is not in compliance with this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:191.4 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2785 (October 2013).

§109. Louisiana State Notary Public Examinations

A. The notary exams are given at regional testing centers throughout the state.

B. The examinee can elect to take the notary exam in a computer-testing format or a paper-and-pencil format.

C. The registration fee for the notary exam is shown in §129.

D. Statewide standards for the notary exam are available on the secretary of state's website under the section notary division examinations. These standards include:

1. application procedures;

2. examination schedule;

3. examination format and content; and

4. procedures for review of any examination which was taken and was failed by the examinee.

E. The Office of Assessment and Evaluation for Louisiana State University is offering a notary exam pre-assessment test to show the likelihood of a candidate's ability to be successful on the notary exam. Please refer to the secretary of state's website notary division for more information regarding this pre-assessment test. See §129 for the pre-assessment test fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:191, R.S. 35:191.1, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2785 (October 2013).

§111. Notary Commission

A. Once an applicant has taken and passed the notary exam, the following documents must be filed with the secretary of state's office along with the commission filing fee (see §129), in order to receive his notary commission;

1. two oaths of office forms, properly executed (one copy filed with secretary of state and one copy filed with parish clerk of court);

2. official signature page;

3. either of the following (exempt if an attorney):

a. surety bond or personal surety bond that has been approved by the parish clerk of court in the amount of \$10,000; or

b. errors and omissions policy in the amount of \$10,000; or

4. if an attorney, a certificate of good standing from the Louisiana Supreme Court (in lieu of bond or errors and omissions policy); and

5. commission filing fee (see §129) with a check or money order made payable to the secretary of state.

B. A notary is commissioned based upon the commission date indicated on the notary database. He does not have to wait until he receives the commission certificate from the

secretary of state's office before performing notary functions. In addition, a notary is commissioned for life.

C. A notary may request an additional commission certificate or replace a certificate by logging into his file online or by contacting the notary division. The fees for a certificate of notary commission or a replacement notary certificate are shown in §129.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:71, R.S. 35:72, R.S. 35:75, R.S. 35:191, R.S. 35:191.2, R.S. 36:742, and Attorney General Opinion 1940 Volume 42 Page 2,346.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2785 (October 2013).

§113. Attorneys

A. An attorney who is licensed to practice law in Louisiana can obtain a notary commission by filing a qualifying application and commission documents.

B. The notary commission for an attorney must be filed in the parish of their residence.

C. An attorney is exempt from taking the notary exam and from the surety bond or personal surety bond requirements.

D. An attorney has statewide jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:71, R.S. 35:191, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2786 (October 2013).

§115. Parish Changes

A. If a notary moves to another parish, he must submit the following to the secretary of state:

1. completed qualifying application form with the qualifying fee which is separate from commission filing fee;

2. two oaths of office forms, properly executed (one copy filed with secretary of state and one copy filed with parish clerk of court);

3. official signature page;

4. either of the following (exempt if an attorney):

a. surety bond or personal surety bond that has been approved by the parish clerk of court in the amount of \$10,000;

b. errors and omissions policy in the amount of \$10,000; or

c. rider for an existing surety bond that has been approved by the parish clerk of court changing the parish; and

5. commission filing fee (see §129) with a check or money order made payable to the secretary of state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:71, R.S. 35:72, R.S. 35:75, R.S. 35:191, R.S. 35:191.3, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2786 (October 2013).

§117. Name Changes

A. If a notary's name changes, the notary must submit the following to the secretary of state:

1. two oaths of office forms, properly executed (one copy filed with secretary of state and one copy filed with parish clerk of court);

2. name change form listing name on current commission, new name requested, and reason for change;

3. official signature page;

4. either of the following (exempt if an attorney):

a. original or certified true copy surety or personal surety bond that has been approved by the parish clerk of court in the amount of \$10,000;

b. original errors and omissions policy in the amount of \$10,000; or

c. rider for an existing surety bond that has been approved by the parish clerk of court changing the name on the bond; and

5. commission filing fee (see §129) with a check or money order made payable to the secretary of state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:71, R.S. 35:72, R.S. 35:75, R.S. 35:191, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2786 (October 2013).

§119. Dual Commission

A. Dual commissions can only be obtained for one other parish in which the notary maintains an office and is not reciprocal with the existing commission (see reciprocal parish list.)

B. If a notary requests a dual commission, he must submit the following to the secretary of state:

1. two oaths of office forms, properly executed (one copy filed with secretary of state and one copy filed with parish clerk of court);

2. official signature page;

3. either of the following (exempt if an attorney):

a. surety bond or personal surety bond that has been approved by the parish clerk of court in the amount of \$10,000; or

b. errors and omissions policy in the amount of \$10,000; and

4. commission filing fee (see §129) with a check or money order made payable to the secretary of state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:71, R.S. 35:191, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2786 (October 2013).

§121. Notary Bond Renewal

A. Surety bonds and errors and omissions policies are filed with the secretary of state every five years. Personal surety bonds expire at the death of the surety and must be renewed when such occurs.

B. Either of the following must be submitted to the secretary of state for bond renewal (exempt if an attorney):

1. surety bond or personal surety bond that has been approved by the parish clerk of court in the amount of \$10,000; or

2. errors and omissions policy in the amount of \$10,000.

C. A check or money order made payable to the secretary of state for the notary bond renewal filing fee (see §129) must accompany the renewal for the notary bond.

D. A notary who fails to renew his notarial bond timely or fails to file his new or renewed bond of evidence of insurance coverage will be automatically suspended and will not have authority to perform the functions of a notary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:71, R.S. 35:72, R.S. 35:75, R.S. 35:191, and R.S. 36:742

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2786 (October 2013).

§123. Leave of Absence

A. The secretary of state, on behalf of the governor, may grant a leave of absence to any notary that is absent from the state for a period not to exceed 36 months. The notary must provide the secretary of state with a letter requesting the leave specifying the date the notary is to be absent and the date of return.

B. If a notary is in the military service, he should notify the secretary of state's office certifying that he is a member of the military service of the United States or state of Louisiana. Included on the notification letter, he should show the expiration date of his bond and the period of leave which begins when the leave is granted. The notary will then have 60 days after the date of discharge to give the notary time to apply for a new bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:131 et seq., R.S. 35:202, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§125. Retirement Status

A. Any notary who is 70 years or older shall be permitted to retire his commission by filing a retirement status affidavit form attesting to the notary's age and certifying that he will no longer exercise the duties and functions of a notary while retirement status is in effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:202 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§127. Resignation

A. Any notary may resign his commission by signing a letter of resignation and forwarding it to the secretary of state's office. After resigning, the notary shall not exercise any duties or functions of a notary public and may become an active notary again only by completing the application process of his parish including taking the exam, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:202 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§129. Notary Division Fee Schedule

A. The fee schedule for notaries public is as follows.

Item	Fee
Annual Report	\$25
Certificate of Notary Commission	\$20
Certified Copy of Notary Bond	\$20
Commission Filing Fee	\$35
Notary Bond Renewal	\$20
Notary Exam Pre-Assessment Test	\$30
Notary Exam Registration Fee	\$75
Notary Filing Information Packet	\$0
Notary Study Guide	\$90
Qualifying Application Fee	\$35
Replacement Identification Card	\$3
Replacement Notary Certificate	\$15

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:1 et seq., R.S. 35:191.2, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§131. Notary Seal

A. A notary's signature is his seal. If he elects to have a seal to use when notarizing documents, he is not required to have a particular style of seal to give authenticity to his copies.

B. The name of the notary and the witnesses must be typed, printed legibly, or stamped.

C. Every document notarized in the state of Louisiana shall have the notary identification number assigned to him/her by the secretary of state and that number shall be typed or printed legibly and placed next to the notary's name. If the notary is an attorney who is licensed to practice law in the state of Louisiana, he may use his Louisiana state bar roll number in lieu of his notary identification number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:12 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§133. Reciprocal Parishes

A. There are groups of reciprocal parishes created by the legislature (see R.S. 35:191). The reciprocal agreement allows a validly appointed notary in a parish authorization to exercise any and all functions of a notary in the reciprocal parishes without additional bonding or examination. For a list of reciprocal parishes, see the secretary of state's website notary division.

B. If a notary moves to a parish that is in his reciprocal grouping, he is still required to be commissioned in the parish he resides in.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:191 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§135. Fees to be Charged by a Notary Public

A. Louisiana does not have a statutory fee schedule which would determine or limit what a notary can charge for his services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§137. Notary Database

A. The secretary of state's website contains current contact information on all notaries commissioned in the state of Louisiana.

B. If a notary is listed on the notary database as being suspended, the notary did not file his annual report or his bond has expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:191.2 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division LR 39:2787 (October 2013).

§139. Annual Report

A. Within 60 days prior to the anniversary date of the notary's commission, the notary division shall mail out an annual report notice to all notaries in the state of Louisiana.

B. The notary can file his report by:

1. registering online at the secretary of state's website using a credit card; or
2. completing the annual report form and:
 - a. attaching a check or money order made payable to the secretary of state and mailing to the notary division; or

b. completing the credit card cover sheet and faxing or emailing with the annual report to the notary division.

C. The annual report filing fee is shown in §129.

D. To file online, the notary will be required to use his notary identification number and the unique access code which is printed on the front of the annual report renewal notice post card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:191.2, R.S. 35:202, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2787 (October 2013).

§141. Ex-Officio Notaries Public

A. An ex-officio notary public must meet the same qualifications as a notary public listed in §101 above.

B. An ex-officio notary is required to file either of the following with the notary division of the secretary of state's office as a condition for the faithful performance of all duties required by law toward all persons who may employ him as an ex-officio notary:

1. original or certified true copy surety or personal surety bond that has been approved by the parish clerk of court in the amount of \$10,000; or

2. original errors or omissions policy in the amount of \$10,000.

C. If the ex-officio notary is a state employee who serves as an ex-officio notary in the course and scope of his employment, he must file his oath of office with the secretary of state's office.

D. An ex-officio notary is authorized to perform functions, powers, and authority only as directly related to and required for the operation of the office, agency, or department under which the authority is granted.

E. Title 35 Chapter 6 of the Revised Statutes contains specific requirements for ex-officio notaries who will perform various functions of a notary public in their place of employment (i.e. administer oaths, take acknowledgments, attest on affidavits, etc.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:391 et seq. and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2788 (October 2013).

§143. Provisional Notary

A. A notary applicant can be provisionally commissioned if he meets the following qualifications and requirements:

1. the applicant resides and maintains a residence in a parish with a population of less than 40,000;

2. the applicant has passed the multiple choice and research section of the notary exam on or after December 1, 2009;

3. the applicant's authority to exercise the powers of a notary public is only within the course and scope of the applicant's employment;

4. the applicant's notarial authority shall be under the direction of a supervisor for the employer;

5. the applicant's supervisor shall not be a notary;

6. the applicant's employer must be a business that was in existence prior to January 1, 2013;

7. the applicant's employer shall not be a business whose primary function is to provide notary services;

8. the applicant's employer must be a party to the act or instrument being sworn to, acknowledged or passed before or the act or other instrument is necessary to or

incidental to the business activity or operations of the employer;

9. at least one of the persons appearing before the applicant to execute an affidavit, acknowledgment, or other notarial act or instrument is a former, current, or prospective client or a customer of the employer;

10. applicant's jurisdiction is within the parish of commission and in any adjacent parish with a population of less than 40,000 where his employer maintains an office;

11. the applicant must post and maintain a bond, at the expense of employer, in the amount of \$20,000;

12. the applicant's employer shall hold harmless any claim made against the notary bond when the applicant is acting in the course and scope of employment or under the direction of the employer;

13. the applicant must submit the completed and notarized application for provisional notarial appointment provided by the secretary of state to the notary division;

14. the applicant is required to attend the notary orientation class provided by the secretary of state;

15. if the employer terminates the employment or no longer wishes to be bound by these provisions, he shall immediately send written notice to the secretary of state and the commission shall be automatically revoked unless:

a. the applicant declares in writing his intention to remain a provisional notary with an inactive status until a new application for provisional notary form from another employer is submitted to the secretary of state; or

b. the applicant declares in writing the desire to remain a provisional notary with an inactive status while pursuing successful completion of the notary exam and shall exercise no notarial functions until notified by the secretary of state that his status has been changed;

16. if the applicant voluntarily terminates employment with named employer, a written notification to the secretary of state must be submitted and:

a. the applicant declares in writing his intention to remain a provisional notary with an inactive status until a new application for provisional notary form from another employer is submitted to the secretary of state; or

b. declares in writing his intention to remain a provisional notary with an inactive status while pursuing successful completion of the notary exam and shall have no authority to exercise notarial functions until notified by the secretary of state that his status has been changed;

17. the applicant understands that the employer is not liable for any damages caused by negligent or fraudulent errors or omissions when notarizing outside the course and scope of employment;

18. the commission can be suspended or revoked by the court or suspended by the secretary of state pursuant to R.S. 35:15; and

19. the provisional notary commission shall expire on August 1, 2016 unless all sections of the notary exam have been successfully completed.

B. The provisional notary has no authority to:

1. draft and prepare a last will and testament or donation mortis causa;

2. draft and prepare a trust; or

3. draft and prepare any instrument that transfers title to immovable property including but not limited to an act of sale or act of donation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:15, R.S. 35:191, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 39:2788 (October 2013).

Tom Schedler
Secretary of State

1310#085

RULE

Department of State Commercial Division Office of Uniform Commercial Code

Uniform Commercial Code (LAC 10:XIX.Chapters 1-3)

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and under the authority of Louisiana's Uniform Commercial Code (R.S. 10:9-101 et seq.), R.S. 10:9-526, Public Law 99-198 (Food Security Act of 1985), and R.S. 36:742, the secretary of state has repealed and replaced LAC 10:XIX.Chapters 1-3 to provide regulations for the Uniform Commercial Code in the state of Louisiana.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XIX. Uniform Commercial Code

Chapter 1. Secured Transactions

§101. Policy

A. In the state of Louisiana, title 10, chapter 9 was enacted as the Uniform Commercial Code, secured transactions (hereinafter referred to as the UCC). The UCC implemented provisions of article 9 with regard to the notice filing approach under which an abbreviated notice is filed with the appropriate filing officer evidencing that a debtor and a secured party intend to engage in or have engaged in a secured transaction using specified collateral as security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-101 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013).

§103. Place of Filing—When Filing Is Required in Louisiana

A. The proper place to file in order to perfect a security interest is with the clerk of court of any parish, or, in the case of Orleans Parish, with the recorder of mortgages thereof (the filing officer).

B. It is only necessary to file in one parish to properly perfect a security interest, notwithstanding the location of the collateral, the location of the debtor, or the fact that the secured collateral may be relocated or situated in various parishes within the state of Louisiana.

C. The secretary of state is not authorized to accept UCC filings. Any filings directed erroneously to the secretary of state will be returned to the secured party with directions as to the proper filing procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-501, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013).

§105. Formal Requisites of Financing Statement

A. To be effective, a financing statement must:

1. give the debtor's name and mailing address:

a. a financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor (as applicable); and

b. the trade names of the debtor, or the names of the individual partners, may also be set forth in the financing statement at the option of the secured party;

2. give the name and address of the secured party from which information concerning the security interest may be obtained; and

3. give a statement indicating the types, or describing the items, of collateral:

a. if the collateral is minerals or the like, including oil and gas, or accounts resulting from the sale thereof at the wellhead or minehead, or is a fixture, the financing statement must:

i. show that it covers this type of collateral;

ii. be accompanied by an attachment containing a description of the real estate sufficient if it were contained in a mortgage of the real estate to cause such mortgage to be effective as to third persons if it were properly filed for record under Louisiana law; and

iii. if the debtor does not have an interest of record in the real estate, the financing statement must also show the name of a record owner of the immovable or real right therein. It is not necessary to name all record owners of the immovable or real right;

b. the standard Uniform Commercial Code, financing statement form (Form UCC-1) for Louisiana and has been approved by the secretary of state contains appropriate spaces to indicate whether the filing is fixture or mineral related, and to set forth the name of the record owner if the named debtor does not own the real estate.

B. When a debtor so changes his name or in the case of an organization its name, identity, or corporate structure so that a filed financing statement becomes seriously misleading to third parties, a new Form UCC-1 must be filed within four months after the change to perfect a security interest in collateral acquired by the debtor more than four months after the change. Form UCC-1 may be filed by the secured party without the debtor's signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-502, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013).

§107. Forms to be Used in Filing

A. Under the UCC, the notice to be filed with the filing officer is called a financing statement. The approved Form UCC-1 measures 8 1/2 by 11 inches. All filing officers will accept these standard forms. Failure to use Louisiana's Form UCC-1 renders the filing subject to the nonstandard form penalty.

B. If the space provided on Form UCC-1 is inadequate, the item should be identified and continued on an additional 8 1/2 by 11 inch sheet. The name of the debtor should appear as the first item on the additional sheet.

C. The security agreement entered into by the secured party and the debtor is sufficient as a financing statement if it contains all the information required in a financing

statement and is signed by the debtor; however, the nonstandard form penalty will be assessed for the filing of such agreement.

D. A carbon, photographic, facsimile, or other reproduction of a security agreement or financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in the state of Louisiana.

1. Filing officers shall reject any financing statement or security agreement if the copy is illegible.

2. Fax filings of the financing statement will be accepted.

3. Laser printed financing statements prepared by computerized loan documentation service companies will be accepted as standard filings if presented in the same format as Louisiana's Form UCC-1 on 8 1/2 by 11 inch paper.

E. A consignor, lessor, depositor, or bailor of goods has the option of filing a financing statement using the terms consignor, consignee, lessor, lessee, depositor (or bailor), and depositary (or bailee), instead of the terms secured party and debtor. The filer may indicate that the financing statement is filed as a lease, consignment, deposit, or bailment either by indicating the same in the statement describing the types, or items, of the secured collateral or by designating the status of the parties to the transaction in the appropriate debtor and secured party name blocks and in the space designated for signatures, or both.

F. A financing statement may disclose an initial assignment of the security interest by giving the name and address of the assignee. After disclosure of the assignment, the assignee is the secured party of record. Form UCC-1 contains appropriate space to disclose such an initial assignment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-521, R.S. 10:9-525, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013).

§109. Presentation of Filing

A. All filings required by the UCC shall be made by presenting the appropriate documents and tendering the required fees to any of the 64 filing officers. Filings may be made in person, by mail, or by fax machine pursuant to §107.D herein. Payment of the fees shall be made in any manner acceptable by the filing officer in the parish in which the filing is made.

1. If Form UCC-1 is presented for filing, the form shall be filed with the filing officer.

2. Although a filer is encouraged to utilize Form UCC-1, the filer may submit a copy of the security agreement in lieu of Form UCC-1 and attach the nonstandard filing fee. If the required signatures appear on the nonstandard filing, they need not appear on Form UCC-1.

3. If an acknowledgment copy from the filing officer is desired by persons submitting a facsimile copy of the financing statement, a laser printed financing statement or a copy of the security agreement, the filer must submit an additional copy of the document.

B. The filing officer shall mark each financing statement with a file number, the parish of filing, and the date and time of filing.

C. After the document has been filed, the second copy (acknowledgment copy of Form UCC-1 or the photocopy of the document submitted by the filer) will be returned to the secured party of record. If the acknowledgment copy is to be returned to another party or another address, indicate the same in the appropriate box on Form UCC-1.

D. The filing officer shall transmit the information contained in the financing statement together with the date and time of filing and file number thereof, no later than 4:30 p.m. on the second business day following filing, to the secretary of state for inclusion in the master index. Note that a summary of the collateral described in the financing statement may be included in the information transmitted to the secretary of state. This summary is for informational purposes only and is not a substitute for the description of the collateral contained in the financing statement.

E. The secretary of state shall, within two business days following receipt of such information from the filing officer, send written notice by mail or electronically confirming such receipt and reflecting all information received and included in the master index, to the secured party of record and such other requesting person as designated on the financing statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2790 (October 2013).

§111. Indexing

A. If more than one debtor name is set forth in the financing statement or other statement, all debtors, including any listed trade names, will be entered into the secretary of state's master index. If an attachment is required to complete the debtor name listing, please indicate the same in the additional debtor name block on Form UCC-1 and attach the listing on an 8 1/2 by 11 inch sheet.

B. Debtor names shall be indexed exactly as set forth by the secured party in the debtor name block of Form UCC-1, or in the case of a nonstandard filing, as set forth in the body of the agreement. Please note the following for clarification.

1. If the secured party desires to have the filing officer additionally index a married woman under her maiden name, the secured party must specifically request the same by setting forth the maiden name separately.

2. In the event the debtor's signature exists and varies from the typewritten name set forth in the debtor name block of Form UCC-1 (or in the body of a nonstandard filing) and the secured party desires to have this varied name included in the master index, the secured party must specifically request the same by setting forth the varied name as an additional debtor name on the financing statement.

C. The secretary of state shall maintain a master index of information contained in all financing statements and other statements filed with filing officers and transmitted to the secretary of state. The master index shall list all such statements according to the name of the debtor and shall include all of the information transmitted to the secretary of state by all filing officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2790 (October 2013).

§113. Duration

A. With the exception of transmitting utility filings presented in the format required by §107 herein, a financing statement is effective for a period of five years from the date of filing. Transmitting utility filings properly presented for filing are effective until a termination statement is filed with the filing officer with whom the financing statement was originally filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-526 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§115. Subsequent Filings

A. Filings relating to changes affecting the initial financing statement have been consolidated and incorporated into a single standard form for Louisiana prescribed by the secretary of state called Uniform Commercial Code, amendment form (Form UCC-3). This single composite form may be used as a continuation statement, a release statement, a statement of partial assignment, a statement of assignment (full assignment), a termination statement, an amendment to a financing statement, or a statement of master assignment or master amendment (affecting 20 or more initial financing statements filed in the same parish).

B. Form UCC-3 measures 8 1/2 by 11 inches. Any filings made on any form other than on the approved Form UCC-3 will be assessed the nonstandard filing fee penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-512, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§117. Procedure for Filing Form UCC-3

A. The procedural rules set forth in §107 and §109 herein governing the use of prescribed forms and presentation of Form UCC-1 filing are incorporated by reference herein and must be followed in the presentation of Form UCC-3 or other statement changing the status of an initial filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§119. Place of Filing Form UCC-3

A. Any subsequent filings affecting an initial UCC financing statement must be filed in the parish in which the initial UCC financing statement was filed.

B. Filings erroneously directed to a parish other than that in which the initial financing statement was filed shall be rejected by the filing officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§121. Preparation of Form UCC-3 Filing

A. Any Form UCC-3 filing changing the initial financing statement must:

1. give the name and address (as applicable), of each debtor as it appears on the initial financing statement or the most recent filing;

2. give the name and mailing address (as applicable), of the secured party of record;

3. give the initial UCC file number (entry number), the date of filing, and the parish in which the initial financing statement was filed; and

4. indicate the type of action requested (Only one type of transaction may be requested on any Form UCC-3.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-516, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§123. Additional Specific Requirements for Filings Changing the Status of an Initial UCC Filing

A. Continuation Statement

1. A filed financing statement is effective for a period of five years. No exception is made for a stated maturity date of less than five years. A security interest ceases to be perfected unless a continuation statement is filed prior to the expiration date of a financing statement. A continuation statement may only be filed by the secured party within the six-month period prior to the expiration date and must state that the initial financing statement is still effective. The timely filing of a continuation statement extends the effectiveness of the initial financing statement for an additional five-year period after the last date for which the initial financing statement is effective. Continuous perfection may be achieved by filing successive continuation statements in this manner.

2. If the initial financing statement lapses due to a failure to timely continue within the six-month period prior to the end of the five-year period of effectiveness, the secured party must file a new financing statement rather than a continuation statement.

3. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and include the required fee for an assignment.

B. Release

1. The secured party of record may release all or a part of any collateral described in a filed financing statement. The statement of release must include a description of the released collateral.

2. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record, and include the required fee for an assignment.

3. If the secured party wishes to release all of the collateral, a termination statement should be filed.

C. Assignments

1. In addition to the general information required on Form UCC-3, a statement of assignment must set forth the name and address of the assignee.

a. Full Assignment. A full assignment is made when a secured party assigns all rights under the financing statement. Form UCC-3 contains an appropriate box to be

checked by the secured party if a full assignment is contemplated.

b. **Partial Assignment.** A partial assignment is made when a secured party assigns rights to only part of the collateral described in the financing statement. A description of the assigned collateral must be set forth in the appropriate space on Form UCC-3 or on an attached sheet if more space is required. Form UCC-3 contains an appropriate box to be checked by the secured party if a partial assignment is contemplated.

2. A copy of the assignment agreement is sufficient as a separate statement if it contains all the requirements set forth in §§115-121 and §123.C, but will constitute a nonstandard filing subject to the nonstandard filing fee.

D. Termination

1. Prior to expiration of the five-year effective period, a financing statement may be canceled by filing a termination statement. The termination statement must state that the secured party of record no longer claims a security interest under the financing statement, which must be identified by its initial file number. Form UCC-3 contains an appropriate box to be checked by the secured party when a termination is requested.

2. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record, and include the required fee for an assignment.

E. Amendment

1.a. An amendment may be used to change or add the following:

- i. name(s) of the debtor or the secured party;
- ii. the address of either the debtor or the secured party; or
- iii. to add collateral.

b. If an amendment adds collateral, a description of the collateral must be included; this filing is effective as to the added collateral only from the filing date of the amendment.

2. The filing of an amendment does not extend the period of effectiveness of a financing statement.

3. When a debtor's name has been deleted by the filing of an amendment changing the name, the original debtor name will continue to be reflected in the secretary of state's master index and therefore will be reflected on a certificate requesting that exact name.

4. An amendment signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record, and include the required fee for an assignment.

F. Master Assignment

1. A secured party of record may assign all of its rights under 20 or more financing statements filed in any one parish by filing Form UCC-3 master assignment in the parish in which the initial financing statements were filed.

2. The secured party shall specifically indicate the type of statement being filed on Form UCC-3 and type the words "master assignment" in the space proved therein.

3. As an exception to §121.A.2 and 4 herein, debtor information (name and address) and the date of filing relating to each initial financing statement being assigned

need not be provided. However, the following information shall be set forth on Form UCC-3 master assignment:

a. the name and address of the secured party of record;

b. the name and address of the assignee;

c. the initial file number of each financing statement being assigned. This information shall be provided on 8 1/2 by 11 inch sheets attached to Form UCC-3, headed by the name of the secured party of record; and

d. the parish of initial filing.

G. Master Amendment

1. A secured party of record may amend its name and mailing address shown in 20 or more financing statements filed in any one parish by filing Form UCC-3 master amendment in the parish in which the initial financing statements were filed.

2. The secured party shall specifically indicate the type of statement being filed on Form UCC-3 and type the words "master amendment" in the space provided therein.

3. As an exception to §123.A.2 and 4 herein, debtor information (name and address) and the date of filing relating to each initial financing statement being amended need not be provided. However, the following information shall be set forth on Form UCC-3 master amendment:

a. the name and address of the secured party of record;

b. the new name and address of the secured party, which should be set forth on Form UCC-3;

c. the initial file number of each financing statement in which the secured party's name and address is being amended. This information shall be provided on 8 1/2 by 11 inch sheets attached to Form UCC-3, headed by the name of the secured party of record; and

d. the parish of initial filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§125. Request for Information or Copies

A. Background

1. The secretary of state's master index of information is composed of UCC filing data submitted by the 64 filing officers. The database is a composite of all presently effective financing statements, as well as any statements of assignment, continuation, release, or amendment, and initial financing statements which have been terminated within the one-year period prior to a request for a certificate. All UCC filings are indexed according to the name of each particular debtor set forth on the financing statement.

2. The secretary of state's master index does not contain information on statutory liens or tax liens, except for statements filed pursuant to R.S. 23:1546 relative to unemployment compensation contributions, and IRS tax liens affecting movable property filed on or after September 1, 1990. In addition, the master index does not contain any information on notices of assignments of accounts receivable, or chattel mortgage or collateral chattel mortgage filing information.

3. Initial UCC documents filed with the parish filing officers remain at the local level in the parish of filing. Any filings which change the status of an initial UCC filing must

be made with the filing officer with whom the financing statement was originally filed, and the original will remain on file in that parish. The secretary of state does not receive copies of UCC filings. Therefore, requests for copies of documents must be made in the parish in which the filing was originally made. If filings on a particular debtor have been made in more than one parish, each parish filing officer must be contacted for copies of such filings. If the file numbers cannot be provided by the requesting party, a certificate must be requested from the filing officer.

B. Prescribed forms to be used in requesting information or copies. A standard form for Louisiana prescribed by the secretary of state called information request form (Form UCC-11) shall be used in requesting:

1. copies of filings; and/or
2. the filing officer's certificate showing whether there is listed any presently effective financing statements or other statements naming a particular debtor or secured party. It is recommended that the Form UCC-11 be utilized to facilitate accurate responses, but there is no penalty for failure to use the form.

C. Information Request (Certificate)

1. A separate written request for information (certificate) must be submitted for each debtor name. If information is requested on more than one name, a separate Form UCC-11 must be submitted for each name. A business name, trade name, or D/B/A is considered a separate name. A husband and wife are considered separate debtors.

2. The requesting party must be sure to submit a request for a certificate with the correct spelling of the debtor's name. A deviation or error in the debtor's name may result in a failure to disclose all of the desired information.

3. The UCC certificate issued by the filing officer will contain the following information as reflected in the secretary of state's master index:

- a. statements filed under the exact debtor name requested;
- b. statements filed under the exact debtor name requested in which no Social Security number or employer identification number was provided in the initial financing statement:
 - i. note that if the requesting party is unable to provide the debtor's taxpayer identification number, the certificate will reflect all filings under the exact name requested without regard to the various Social Security number or employer identification number designated therein;
 - ii. if the requesting party desires a certificate which reflects all filings under an exact debtor name without regard to the Social Security number or employer identification number on the financing statement (e.g., whether the number is different, the same, or not disclosed on the financing statement), the requesting party should omit the Social Security number or employer identification number when submitting his request to the filing officer. Note that a certificate run on a common debtor name (e.g., John Smith) without regard to Social Security number or employer identification number may disclose an indefinite number of listings and may result in a substantial fee;
- c. statements filed under the exact Social Security number or employer identification number provided, without regard to the spelling of the debtor's name.

4. Upon request, a supplement to the certificate will also be provided by the filing officer which will set forth filings listed under debtor names which may be considered similar to the name requested, so as to assist the requesting party in locating all desired filings. The supplement is not certified by the filing officer and may not represent a complete listing of debtor names which may be considered similar to the name under which the search was made.

D. Information Request (Certificate) on Secured Parties. Form UCC-11 requests for information on secured party names may be submitted to any of the 64 filing officers. The request shall specifically indicate that it pertains to a secured party and contain the Social Security number or employer identification number, as applicable, of the secured party who is the subject of the request. The UCC certificate issued by the filing officer will disclose all financing statements or other statements filed in the UCC master index on or after January 1, 1990, in which the secured party's Social Security number or employer identification number was provided on the initial statement or subsequent filing relating thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519, R.S. 10:9-526, R.S. 36:742, and R.S. 52:52.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2792 (October 2013).

§127. Schedule of Fees for Filing and Information Requests

A. The fees schedule for filing and information requests submitted on Forms UCC-1, UCC-3, and UCC-11 are provided in R.S. 10:9-525.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519 et seq., R.S. 10:9-525, R.S. 10:9-526, R.S. 36:742, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013).

Chapter 2. Internal Revenue Service Tax Liens
§201. Place of Filing

A. The proper place to file notices of federal tax liens affecting movable property (corporeal and incorporeal) is with the clerk of court of any parish, or, in the case of Orleans Parish, with the recorder of mortgages thereof (the "filing officer").

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, R.S. 36:742, and R.S. 52:52.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013).

§203. Forms to be Used in Filing

A. The document entitled "Notice of Federal Tax Lien under Internal Revenues Laws" utilized nationwide by the IRS shall be accepted by all filing officers in lieu of Form UCC-1. Nonstandard form penalties shall not be applicable to filings presented by the IRS pursuant to this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-526 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013).

§205. Filing Fees

A. The uniform filing fee to be collected by each filing officer includes prepayment of the termination fee, as well

as, the indexing of all debtor names appearing on the lien submitted by the IRS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-525, R.S. 10:9-526, R.S. 36:742, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013).

Chapter 3. Central Registry

§301. Definitions

Buyer in the Ordinary Course of Business—a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations and is in the business of selling farm products.

Central Registry—the master index maintained by the secretary of state reflecting information contained in all effective financing statements, and statements evidencing assignments, amendments, continuations, and terminations thereof.

Commission Merchant—any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

Creditor—any person who holds a security interest in a farm product.

Crop Year—

1. for a crop grown in soil, the calendar year in which it is harvested or to be harvested;

2. for animals, the calendar year in which they are born or acquired; or

3. for poultry or eggs, the calendar year in which they are sold or to be sold.

Cumulative Addendum—a document listing all information transmitted by the filing officers to the central registry as of the date of issuance that was not included on the most recent master list.

Debtor—any person who owns or has an ownership interest in farm products which are subject to a security interest of creditors.

Effective Financing Statement—a written instrument which is an abstract of a security device and which complies with the provisions of R.S. 3:3654(E). An *effective financing statement* may also contain additional information sufficient to constitute a financing statement or other statement under chapter 9 of title 10 of the *Louisiana Revised Statutes*.

EFS—an effective financing statement.

Encumbrance Certificate—a written document which lists all effective financing statements affecting a person which have been filed with the filing officer and containing the information required by this Chapter to be transmitted to the secretary of state for inclusion in the central registry on the date and at the time the certificate is issued and which complies with the provisions of R.S. 3:3654(F).

Farm Product—any type of crop whether growing or to be grown, and whether harvested or unharvested, or any species of livestock, or any type of agricultural commodity or product raised or cultivated of every type and description, including but not limited to cattle, hogs, sheep, horses, bees, rabbits, or poultry, and oysters, crabs, prawns, shrimp, alligators, turtles, and fish raised, produced, cultivated, harvested, or gathered on any beds or bodies of water, whether owned, leased, or licensed by the debtor, grains, beans, vegetables, grasses, legumes, melons, tobacco, cotton, flowers, shrubberies, plants and fruits, nuts and berries, and other similar products whether of trees or other sources, or if

they are a product of such crop or livestock in its unmanufactured state, such as seed, ginned cotton, wool-clip, honey, syrup, meat, milk, eggs, and cut, harvested, or standing timber, or supplies used or produced in farming operations, and if they are in the possession, including civil possession as defined in Civil Code articles 3421 and 3431, of a debtor engaged in planting, producing, raising, cultivating, harvesting, gathering, fattening, grazing, or other farming operations.

Filing—the receipt of an EFS, amendment, assignment, continuation, release, or termination of an EFS by the filing officer stamped with the date and time received and assigned a file number.

Filing Officer—the clerk of court of any parish, or in the case of Orleans Parish, the recorder of mortgages.

Knows or Knowledge—actual *knowledge*.

Master List—a document listing all effective financing statements, amendments, assignments, and continuations of effective financing statements which:

1. is organized according to farm products; and

2. is arranged within each such product:

a. in alphabetical order according to the last name of the individual debtors, or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors;

b. in numerical order according to the Social Security number of the individual debtors, or, in the case of debtors doing business other than as individuals, the Social Security number or employer identification number of such debtors;

c. geographically by parish; and

d. by crop year.

Office—the *office* of the secretary of state of the state of Louisiana.

Person—any individual, partnership, corporation, trust or any other business entity.

Portion—*portion* of the master list distributed to registrants regularly that cover the farm products in which such registrant has indicated an interest.

Registrant—any person who has made application with the office of the secretary of state, has paid the required registration fee, and received written notice that his application has been accepted.

Regular Business Day—any day that the office of the secretary of state and filing officers are open for routine business.

Secretary—the *secretary* of state of the state of Louisiana, or his duly authorized agent.

Secured Party—a creditor with a security interest in farm products.

Security Device—a written instrument that establishes a creditor's security interest in farm products or any pledge or privilege described in R.S. 9:4521, whether or not evidenced by a written instrument.

Security Interest—an interest in or encumbrance upon farm products that secures payment or performance of an obligation.

Selling Agent—a person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farm operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3652, R.S. 3:3654, R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, Civil

Code Articles 3421 and 3431, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2794 (October 2013).

§303. Administration

A. The central registry will be administered by the secretary of state and operated by the uniform commercial code division of the office. Any notices, petitions, documents, or other correspondence shall be addressed to the:

Louisiana Secretary of State
Uniform Commercial Code Division
Central Registry
P.O. Box 94125, Baton Rouge, LA 70804-9125

B. Filings and encumbrance certificates will be administered by the filing officers as discussed in §§307, 309, and 317 herein. Addresses and phone numbers for the 64 filing officers are set forth in §325 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3654, R.S. 3:3655, R.S. 3:3656, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2795 (October 2013).

§305. Formal Requisites of an Effective Financing Statement (EFS)

A. The EFS must:

1. be an original or reproduced copy thereof; and
2. contain:
 - a. the name and address of the secured party;
 - b. the name and address of each person subjecting the farm product to the security interest:
 - i. in the case of a natural person, the surname (last name or family name) must appear first;
 - ii. in the case of a corporation or other entity not a natural person, the name must appear with the first word or character not an article or punctuation mark;
 - c. the Social Security number or, if other than a natural person, the Social Security number or employer identification number of each such person submitting the farm product(s) to the security interest;
 - d. the crop year unless every crop of the farm product in question, for the duration of the EFS, is to be subject to the particular security interest;
 - e. each farm product name and corresponding product code as designated by the secretary of state (see §319 herein);
 - f. the dollar amount of the security interest;
 - g. a reasonable description of the property, including each parish code where the farm product is produced or to be produced; and
 - h. any further details of the farm product subject to the security interest if needed to distinguish it from other such products owned by the same person but not subject to the particular security interest.

B. The top portion of the approved EFS document (Form UCC-1F) also contains space to set forth information required under Louisiana law (R.S. 10:9-101 et seq.) for filing financing statements pursuant to Article 9 of the Uniform Commercial Code. Filing parties are encouraged to utilize the EFS for perfection requirements under the UCC, in order to eliminate duplicate filing requirements and to promote filing efficiency.

C. Forms UCC-1F or UCC-3F amendments must provide all information needed for preparation of the master list of farm products, as set forth in §305.A.2 above. In the event the farm product description provided by the secured party contains a discrepancy between the product name and product code, that particular item will be excluded from the master list. Notice of such exclusion shall be provided in the written confirmation sent by the secretary of state in accordance with §307.I herein.

D. The secretary of state shall not be responsible for any effective financing statement (or particular farm product information contained therein) not revealed in the master list or cumulative addendum thereto, or oral or written confirmation of information furnished by the filing officers pursuant to §315 herein, which was not filed in accordance with these regulations and thereby not appearing in the central registry of farm product information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2795 (October 2013).

§307. Filing Procedures

A. The proper place to file in order to perfect a security interest in farm products is with the clerk of court of any parish, or in the case of Orleans Parish, the recorder of mortgages thereof (the "filing officer").

B. Security devices affecting farm products must be accompanied by a properly completed effective financing statement (EFS) or the filing information will not be reflected in the master list or portions thereof, cumulative addenda, or encumbrance certificates issued in accordance with §315 and §317 herein.

C. All effective financing statements must be submitted on Form UCC-1F as prescribed by the secretary.

D. All amendments, releases, assignments, continuations, and terminations of EFS must be submitted on Form UCC-3F, as prescribed by the secretary.

E. If the space provided on Forms UCC-1F or UCC-3F is inadequate, the additional data may be provided on an additional sheet of paper and attached to Forms UCC-1F or UCC-3F at no additional charge to the filing party. It is also permissible to submit the additional data on 8 1/2 by 11 inch sheets of paper which are each identified at the top with the first debtor's name.

F. All effective financing statements, amendments, releases, assignments, or continuations of effective financing statements must be accompanied by the required fee unless approval for billing has been granted by the filing officer.

G. If the person filing an EFS, amendment, release, continuation, or termination furnishes the filing officer a copy thereof, the filing officer shall note upon the copy the file number and date and hour thereof, and send the copy by mail to such person. If the copy is to be returned to another party or another address, indicate the same in the appropriate box on Forms UCC-1F or UCC-3F.

H. The filing officer shall transmit the information contained in the effective financing statement or other statement, together with the date and time of filing and file number thereof, no later than 4:30 p.m. on the second business day following filing, to the secretary of state for inclusion in the central registry.

I. The secretary of state shall, within two business days following receipt of such information from the filing officer, send written notice to the secured party (and such other interested person designated on the form) confirming such receipt and reflecting all information received and included in the central registry.

J. Any questions regarding the filing information reflected in the written notice of acknowledgment from the secretary of state should first be directed to the filing officer who accepted and recorded the filing.

1. Data entry errors will be corrected by the filing officers at no charge to the secured party. The filing officer shall make each correction and transmit the same to the secretary of state for inclusion in the central registry, together with the date and time such correction was made, no later than 4:30 p.m. on the second business day after receiving written request for the correction. Upon such correction, the secretary of state will send written notice to the secured party confirming receipt of the same.

2. Errors committed by the secured party in preparing the financing statement must be corrected by filing an amendment or by filing a new effective financing statement.

K. Any questions regarding receipt of the written notice of acknowledgment from the secretary of state should be directed to the secretary of state's UCC Division at (225) 925-4701.

L. The secretary is not authorized to accept security devices affecting farm products, or the accompanying EFS. Any filings directed erroneously to the secretary shall be returned to the secured party with directions as to the filing procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2795 (October 2013).

§309. Procedures for Filing Amendments, Assignments, Releases, Continuations and Terminations of EFS

A. Any statement of continuation, amendment, release, continuation, termination, or other similar statement pertaining to an effective financing statement shall identify the initial file number and shall be filed with the same filing officer with whom the effective financing statement was originally filed.

B. Any amendment resulting in a material change to a security device shall be filed in writing and accompanied by related EFS (Form UCC-3F) within three months of the amendment.

1. A material change is whatever change would render the master list entry no longer informative as to what is subject to the security interest in question.

2. The requirement to amend arises when the information already made available no longer serves the purpose and other information is necessary to do so.

3. The amendment must be signed by both the secured party and the person subjecting the farm product(s) to the security interest.

C. All assignments of security devices which are accompanied by related EFS shall become effective at time and date of filing with the filing officer.

D. All continuations of security devices which are accompanied by related EFS must be filed with the filing officer within six months before the expiration of the initial five-year period and must be signed by both the secured party and the person subjecting the farm product to the security interest.

E. Each person who filed an effective financing statement with the filing officer shall request cancellation thereof within 10 calendar days after the date the person who has granted or who is affected by the security device requests in writing, cancellation of the security device, provided the effective financing statement and security interest thereunder are then no longer in effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2796 (October 2013).

§311. Registrations

A. Any person may register with the central registry to receive the master list or a portion thereof. Applications for registration shall consist of two types:

1. initial registrations:

a. an initial registration application may be filed at any time of the year. Within five working days of receipt of a properly completed registration form and required fee, the secretary shall send the applicant written notice of acceptance and the most recent master list and cumulative addendum or portion thereof for which the applicant has indicated an interest. Applicants are not considered registered until they receive written notice of acceptance from the secretary; and

2. renewal registrations:

a. a renewal registration application shall be filed by December 15 of each year. Failure to make application for renewal by December 15 shall result in termination of service by the central registry and loss of registrant status.

B. Registration application forms, as prescribed by the secretary, will be provided by the central registry upon request. The form must be completed in its entirety and submitted with the required fee.

C. The central registry will notify each registrant that a renewal application is due and provide the renewal application to the registrant by October 10 of each year.

D. Failure to register with the secretary subjects buyers, commission merchants, sellers, and others to a risk of additional liability to secured parties. Nonregistrants are encouraged to submit written requests for information to filing officers pursuant to §315.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2796 (October 2013).

§313. Master List

A. The secretary shall compile all information transmitted by the filing officers to the central registry into a master list. The master list or portions thereof will be distributed to each registrant based on the farm products and parishes for which the registrant has indicated an interest.

B. The master list will be compiled on the first regular business day of each quarter, and distributed within five regular business days. Each master list shall contain all properly submitted filing information transmitted prior to close of business on the last regular business day of the previous quarter. Cumulative addenda shall be compiled on the first and fifteenth day of each month and distributed within three regular business days. The central registry will not distribute cumulative addenda on the first of each month in which there is a distribution of a master list.

C. The office shall allow interested parties to obtain direct access to the computerized information in the central registry. Method of access, terms, costs, and conditions will be stipulated by contract between the office and the interested party. The cost of direct access to the interested party will be limited to the actual cost to the central registry.

D. Registrants shall be deemed to have received any master list or cumulative addendum distributed by the central registry on the fifth day following the date of mailing to the intended recipient or the date of actual delivery, whichever occurs first. The central registry shall maintain accurate records so that such dates can be readily determined.

E. Registrants notifying the central registry of non-receipt will be provided a new list within five regular business days of receipt of the notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2796 (October 2013).

§315. Requests for Information from Non-registrants

A. Upon written request submitted to the filing officers, the filing officers shall furnish oral confirmation to any person of the existence of an EFS filed with a filing officer and transmitted to the central registry. The request shall contain:

1. the name, address, and telephone number (and fax number, if available) of the person making the request; and
2. the name, address, parish of residence, and Social Security number or employer identification number of the person who is the subject of the request.

B. Oral confirmation will be provided no later than the regular business day following the day on which the request is received, at or before the time of day when it was received by the filing officer.

C. If the requesting party cannot be reached at the stated telephone number on the next regular business day, the filing officer shall attempt to reach the party on the following regular business day. If at the end of that time the requesting party has not been reached, the filing officer shall be deemed to have fulfilled his obligation to provide oral confirmation.

D. All written requests and responses will be recorded and will be kept on file by each filing officer receiving such requests.

E. All oral confirmations will be followed by written confirmation in the form of an encumbrance certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2797 (October 2013).

§317. Encumbrance Certificates

A. Encumbrance certificates may be requested from any filing officer. The request must be in writing. Each request shall be subject to the following provisions.

1. The request shall contain the name and address of the person making the request.

2. The request shall contain the complete name, address, and parish of residence of the person who is the subject to the request.

3. The request may contain the nickname, initials, or other appellation by which the person who is the subject of the request is sometimes or commonly known.

4. The request shall contain the Social Security number or employer identification number of the person who is the subject of the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3654, R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2797 (October 2013).

§319. Farm Products List and Codes

A. Louisiana shall be deemed to be a state that has established a central registry as to all farm products produced in Louisiana. Notwithstanding the foregoing, only those farm products which have been assigned a collateral product code and approved by the secretary as falling within the definition of a *farm product* pursuant to the Food Security Act of 1985 and regulations issued thereunder shall be deemed acceptable for inclusion in the master list or portions thereof.

B. Persons desiring the most current listing of all approved farm products which have been assigned a corresponding collateral code should contact the secretary at (225) 925-4701.

C. In the event a secured party has taken a security interest in a farm product not specifically assigned a product code by the secretary, the following steps must be taken before the filing may be properly submitted to the filing officer for indexing and inclusion in the master list.

1. Contact the UCC Division/Central Registry at (225) 925-4701 to submit a request for a new farm product name and corresponding collateral product code to be assigned.

2. Generic categories of farm products, such as fish or greens are impermissible under the Food Security Act of 1985. Requests for approval of categories deemed generic will be disallowed by the secretary and shall not be accepted for inclusion in the master list.

3. Farm products deemed acceptable by the secretary shall be added to the list of published farm products and assigned a corresponding collateral code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2797 (October 2013).

§321. Schedules of Fees for Filing and Encumbrance Certificates

A. In accordance with R.S. 3:3657, the fees shall be assessed by the filing officers for filing, recording and canceling effective financing statements for Forms UCC-1F and UCC-3F.

B. Registration (initial and renewal) for the master list of farm product encumbrances shall be assessed each calendar year at a flat rate of \$250. All transmissions shall be done electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 3:3657, R.S. 10:9-526, R.S. 36:742, R.S. 49:222(A), and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2798 (October 2013).

§323. Filing Officers

A. The names and addresses of the 64 filing officers for the state of Louisiana can be obtained from the Department of State, Commercial Division, Office of Uniform Commercial Code/Central Registry at (225) 925-4701.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2798 (October 2013).

Tom Schedler
Secretary

1310#093

RULE

**Department of State
Elections Division**

**Voter Registration at Mandatory Voter
Registration Agencies (LAC 31:II.Chapter 4)**

Pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and under the authority of R.S. 18:116, R.S. 36:742, and 42 U.S.C. §1973gg et seq., the secretary of state adopted LAC 31:II.Chapter 4 in an effort to comply with the Permanent Injunction entered on January 23, 2013, by the United States District Court, Eastern District of Louisiana, in the matter of “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), directing the Secretary of State to implement “policies and procedures” no later than March 15, 2013, as to each program for which the Secretary of State has not achieved substantial compliance with the provisions of the National Voter Registration Act, 42 U.S.C. §1973gg et seq., as construed by the district court in the referenced proceeding. The district court’s ruling is under review by the United States Court of Appeals for the Fifth Circuit, and if reversed may necessitate subsequent repeal or amendment of these rules.

Title 31

ELECTIONS

Part II. Voter Registration and Voter Education

**Chapter 4. Voter Registration at Mandatory Voter
Registration Agencies in the State that
Provide Public Assistance or Provide
State-funded Programs Primarily
Engaged in Providing Services to Persons
with Disabilities**

§401. Objective

A. The objective of these rules is to provide procedures to implement the provisions of the National Voter Registration Act, 42 U.S.C. §1973gg et seq., (NVRA), as interpreted by the United States District Court for the Eastern District of Louisiana in “Scott, et al. v. Schedler, et al.” (docket no. 11-926), in a permanent injunction dated January 23, 2013, at those agencies designated by the state as voter registration agencies which include all offices in the state that provide public assistance and all offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities, hereinafter referred to as “mandatory voter registration agencies,” within the intent of 42 U.S.C. §1973gg-5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2798 (October 2013).

§403. Definitions

Department—an office, agency, or other instrumentality of the executive branch that contains mandatory voter registration agencies.

Employee—a full-time or part-time classified or unclassified employee, official, or any independent contractor of any mandatory voter registration agency as defined in this Section.

Mandatory Voter Registration Agency or Mandatory Voter Registration Agencies—all offices or agencies in the state that provide public assistance or that provide state-funded programs primarily engaged in providing services to persons with disabilities.

Site—the physical location where voter registration is conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2798 (October 2013).

§405. Services Made Available

A. At each mandatory voter registration agency, the following services shall be made available:

1. distribution of the state voter registration application with each application for service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance, whether the application, recertification, renewal, or change of address form is in paper or electronic format;

2. provide a declaration form with each application, recertification, renewal, or change of address form as described in 42 U.S.C. §1973gg-5(a)(6)(B);

3. provide each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration application as is provided by the mandatory voter registration agency with regard to the completion of its own forms, unless the applicant refuses such assistance;

4. accept completed voter registration applications for transmittal to the appropriate parish registrar of voters; and

5. accept any change of name submitted by a registrant which shall serve as a notification of change of name for voter registration unless the registrant states at the time of submitting the change that the change is not for voter registration purposes. The transmittal procedure shall be handled in the same manner as voter registration applications.

B. If the mandatory voter registration agency provides services to a person with a disability at the person's home, the agency shall provide the services described in Paragraph A at the person's home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2798 (October 2013).

§407. Declaration Form

A. Each mandatory voter registration agency shall provide a declaration form with each voter registration application that is distributed with each application for service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance.

B. The declaration form shall include the following, in order:

1. the question:

"If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

2. boxes for the applicant to check to indicate whether the applicant would like to register to vote or declines to register to vote (failure to check either box being deemed to constitute a declination to register to vote for purposes of providing assistance in completion of the registration application form), together with the statement (in close proximity to the boxes and in prominent type):

"IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME."

3. if the mandatory voter registration agency provides public assistance, the statement:

"Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

4. the statement:

"If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."

5. the statement:

"For assistance in completing the voter registration application form outside our office, contact _____ at _____."

a. the first blank shall be filled in with the department's name and the second blank shall be filled in with the department's telephone number or other contact information;

6. the statement:

"If completed outside our office, this declaration form and your completed voter registration application form (if you filled one out) should be returned to _____ or _____."

a. the first blank shall be filled in with the department's local office physical location and the second blank shall be filled in with the department's mailing address used to accept applications for service or assistance, recertifications, renewals, and changes of address forms; and

7. the statement:

"If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Louisiana Secretary of State, Commissioner of Elections, P.O. Box 94125, Baton Rouge, LA 70804-9125, Telephone (toll-free) 1-800-883-2805."

C. Completed declaration forms shall be retained by the mandatory voter registration agency for at least 24 months.

D. No information relating to a declination to register to vote in connection with an application made at a mandatory voter registration agency may be used for any purpose other than voter registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2799 (October 2013).

§409. Transmittal of Voter Registration Applications Accepted at Mandatory Voter Registration Agencies

A. Completed voter registration applications accepted by mandatory voter registration agencies shall be transmitted to the appropriate registrar of voters no later than five days after date of acceptance. If a registration application is accepted within five days before the last day for registration, the mandatory voter registration agency shall transmit the completed voter registration application to the appropriate registrar of voters at the conclusion of each business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2799 (October 2013).

§411. Qualified Employees at Mandatory Voter Registration Agencies

A. Qualifications. In order to perform the services set forth herein, an employee at a mandatory voter registration agency shall possess the following qualifications:

1. be an employee of the mandatory voter registration agency; and

2. have received in-service training on implementation of the NVRA.

B. Duties. Every qualified employee at each mandatory voter registration agency shall comply with and perform all requirements of 42 U.S.C. §1973gg-5 and R.S. 18:116, and

shall comply with and perform all duties and responsibilities as set forth in training, manuals, pamphlets, rules and procedures of the secretary of state.

C. Prohibitions. A qualified employee who provides services described in Paragraph A of Section 405 of this Chapter shall not:

1. seek to influence an applicant's political preference or party registration;
2. display any such political preference or party allegiance;
3. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
4. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2799 (October 2013).

§413. Review Process

A. Each mandatory voter registration agency shall appoint a qualified employee to serve as the NVRA site coordinator. Each department shall also appoint a NVRA department coordinator. The NVRA site coordinators and NVRA department coordinator shall be responsible for ensuring compliance by each mandatory voter registration agency with the duties and responsibilities provided in 42 U.S.C. §1973gg-5 and R.S. 18:116, and as set forth in training, manuals, pamphlets, rules and procedures of the secretary of state.

B. Each department shall submit the names and contact information of the NVRA site coordinators and NVRA department coordinator to the secretary of state NVRA coordinator. When a change is made, the department shall provide the name and contact information to the secretary of state NVRA coordinator within 10 days.

C. On a quarterly basis, each NVRA department coordinator shall meet with the secretary of state NVRA coordinator to review procedures, forms, and registration data, and to monitor any problem areas where changes in rules or laws may be necessary, or where improvement is needed.

D. Beginning on January 1, 2014, and on a quarterly basis thereafter, the NVRA department coordinator shall submit to the secretary of state NVRA coordinator a concise report that documents the following:

1. the total number of applications for service or assistance, recertifications, renewals, and changes of address relating to such service or assistance received by the department, by program and site;
2. the total number of declaration forms received by the department, by program and site; and
3. the total number of completed voter registration applications received by the department and forwarded to the appropriate registrar of voters, by program and site.

E. Each department shall submit its policies, procedures, and forms currently in use or to be used to implement the provisions of 42 U.S.C. §1973gg-5 and R.S. 18:116 to the secretary of state for approval. The department shall not

implement any policies, procedures, or forms until the approval of the secretary of state has been provided to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2800 (October 2013).

§415. Training

A. Training on implementation of 42 U.S.C. §1973gg-5 and R.S. 18:116 shall be provided as follows.

1. The secretary of state shall provide annual training to the NVRA department coordinator, NVRA site coordinators, and other personnel designated by the NVRA department coordinator.

2. The NVRA department coordinator shall provide training for new employees described in Section 403 of this Chapter during employee orientation or as part of initial training within 30 days of the date of hire.

3. The NVRA department coordinator shall provide training on no less than an annual basis to all employees described in Section 403 of this Chapter.

B. All training shall include, but shall not be limited to the following:

1. review of responsibilities of employees to distribute voter registration applications and provide declaration forms;
2. discussion of information which may be used to establish an applicant's age, identity, and residency;
3. discussion of assistance that may be provided to an applicant;
4. review of responsibilities in ensuring accuracy and legibility of voter registration applications and stressing responsibility for informing each applicant that the applicant is not registered to vote until the parish registrar of voters notifies the applicant of registration;
5. review of transmittal requirements; and
6. review of prohibitions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2800 (October 2013).

§417. List of Mandatory Voter Registration Agencies

A. The secretary of state shall maintain a list of the physical location of each mandatory voter registration agency. Once a year, the secretary of state shall submit the list to the NVRA department coordinator who shall verify the list within 30 days. If there is a change, the NVRA department coordinator shall notify the secretary of state NVRA coordinator within 10 days of the change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2800 (October 2013).

§419. Monitoring and Compliance

A. Upon written request of the secretary of state, a department shall prepare a report on NVRA policies, procedures, and practices in sufficient detail to enable the secretary of state to assess compliance with the NVRA for

any mandatory voter registration agency within that department.

B. If, based upon the department’s report and such other information as may come to his attention, the secretary of state suspects a violation, deficient practice or noncompliance with the NVRA, the secretary of state may:

1. request additional information from the department;
2. send a compliance letter to the department to correct any violation, deficient practice or noncompliance;
- or
3. report the suspected violation, deficient practice or noncompliance to the United States Department of Justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2800 (October 2013).

§421. Application of this Chapter

A. This Chapter shall apply equally to all independent contractors, officials, as well as all full-time and part-time classified and unclassified employees of all mandatory voter registration agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:2801 (October 2013).

Tom Schedler
Secretary of State

1310#084

RULE

**Department of Transportation and Development
Office of Engineering**

Automatic License Plate Camera Devices (LAC 70:II.527)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 48:381 and R.S. 48:26, that the Department of Transportation and Development, Office of Engineering, has amended Chapter 5 to provide for permits to law enforcement agencies for the installation of automatic license plate camera devices on department rights-of-way.

**Title 70
TRANSPORTATION
Part II. Utilities**

**Chapter 5. Standards Manual for Accommodating
Facilities on Highway Right-of-Way**

§527. Miscellaneous

A.1. - A.11.d. ...

e. Automatic License Plate Camera Devices. This type of permit is normally issued to Louisiana law enforcement agencies. For purposes of this rule, law enforcement agencies eligible for this permit may include the Louisiana State Police, sheriffs' departments of the parishes of this state and municipal police departments. These permits must be reviewed and approved by the district administrator or his designee. If the automatic license plate

camera device will be placed upon a bridge or sign truss, approval must also be obtained from the department headquarters utility and permit engineer. Permit applicants must comply with all permit requirements.

12. - 15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 19:14, 30:210, 30:211-217, 32:236, 38:2223, 38:3074, 48:26, 48:191-193, 48:217, 48:295.1-4, 48:343-344, 48:381-383, 48:385-387, and 51:1901-1909.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Utility and Permit Section, LR 20:317 (March 1994), amended by the Department of Transportation and Development, Office of Engineering, LR 39:2801 (September 2013).

Sherri H. LeBas
Secretary

1310#004

RULE

**Department of Transportation and Development
Professional Engineering and Land Surveying Board**

Military-Trained Individuals and Military Spouses
(LAC 46:LXI.903, 905, 909, and 911)

Under the authority of the Louisiana professional engineering and land surveying licensure law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Professional Engineering and Land Surveying Board has amended its rules contained in LAC 46:LXI.903, 905, and 909 and to enact LAC 46:LXI.911.

This is a technical revision of existing rules under which LAPELS operates. These changes incorporate the new alternatives for licensure of military-trained individuals and military spouses.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXI. Professional Engineers and Land Surveyors
Chapter 9. Requirements for Certification and
Licensure of Individuals and Temporary
Permit to Practice Engineering or Land
Surveying**

§903. Professional Engineer Licensure

A. - A.6. ...

B. The requirements for licensure as a professional engineer under the alternatives provided in R.S. 37:3651(A), (B) and (C) are as follows:

1. the applicant for licensure as a professional engineer shall be a military-trained individual who has completed a military program of training in engineering at a level that is substantially equivalent to or exceeds the requirements for licensure under R.S. 37:693(B)(2) and Subsection A herein, who has been awarded a military occupational specialty in engineering, who has performed in that military occupational specialty at a level that is substantially equivalent to or exceeds the requirements for licensure under R.S. 37:693(B)(2) and Subsection A herein, who has engaged in the active practice of engineering, who has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or

revocation of a license to practice engineering in Louisiana at the time the act was committed, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

2. the applicant for licensure as a professional engineer shall be a military-trained individual who holds a current, valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that are substantially equivalent to or exceed the requirements for licensure under R.S. 37:693(B)(2) and Subsection A herein, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

3. the applicant for licensure as a professional engineer shall be a military spouse who holds a current, valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that are substantially equivalent to or exceed the requirements for licensure under R.S. 37:693(B)(2) and Subsection A herein, who can demonstrate competency in the practice of engineering through an oral interview by the board, who has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice engineering in Louisiana at the time the act was committed, who is in good standing with and has not been disciplined by the agency that issued the license in the other jurisdiction, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board.

C. The provisions of Paragraphs 1 and 2 of Subsection B shall not apply to any individual who received a dishonorable discharge from the military. The provisions of Paragraph 3 of Subsection B shall not apply to a military spouse whose spouse received a dishonorable discharge from the military.

D. In Subsections B and C, the term *military* shall mean the United States military.

E. The authority for the executive director to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688 and 37:3651.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:804 (October 1984), LR 11:362 (April 1985), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006), LR 37:2412 (August 2011), LR 38:2564 (October 2012), LR 39:1060 (April 2013), LR 39:2801 (October 2013).

§905. Temporary Permit to Practice Engineering

A. ...

B. A military-trained individual or military spouse may be granted a written temporary permit to practice professional engineering for the period from the time the individual has applied to the board for licensure pursuant to

§903.B until either the license has been granted or notice of denial of licensure has been issued, provided such individual holds a current, valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that are substantially equivalent to or exceed the requirements for licensure under R.S. 37:693(B)(2) and §903.A, and provided further that before beginning such temporary practice in this state, the individual shall have applied to the board, paid the prescribed fee, and received a temporary permit, and upon the conclusion of such work, he/she shall advise the board as to the period of time that he/she has practiced in the state under such temporary permit.

C. The provisions of Subsection B shall not apply to any individual who received a dishonorable discharge from the military or to a military spouse whose spouse received a dishonorable discharge from the military.

D. In Subsections B and C, the term *military* shall mean the United States military.

E. The authority for the executive director to issue a temporary permit can only be granted by the board.

F. The fee for a temporary permit shall be equal to the fee paid by an applicant applying for licensure as a professional engineer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688 and 37:3651.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 8:192 (April 1982), amended LR 16:773 (September 1990), LR 19:56 (January 1993), LR 22:286 (April 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 37:2412 (August 2011), LR 39:2802 (October 2013).

§909. Professional Land Surveyor Licensure

A. - A.2. ...

B. The requirements for licensure as a professional land surveyor under the alternatives provided in R.S. 37:3651(A), (B) and (C) are as follows:

1. the applicant for licensure as a professional land surveyor shall be a military-trained individual who has completed a military program of training in land surveying at a level that is substantially equivalent to or exceeds the requirements for licensure under R.S. 37:693(B)(4) and Subsection A herein, who has been awarded a military occupational specialty in land surveying, who has performed in that military occupational specialty at a level that is substantially equivalent to or exceeds the requirements for licensure under R.S. 37:693(B)(4) and Subsection A herein, who has engaged in the active practice of land surveying, who has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice land surveying in Louisiana at the time the act was committed, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional land surveyor by the board; or

2. the applicant for licensure as a professional land surveyor shall be a military-trained individual who holds a current, valid license to engage in the practice of land surveying issued to him/her by proper authority of a state,

territory, or possession of the United States, or the District of Columbia, based on requirements that are substantially equivalent to or exceed the requirements for licensure under R.S. 37:693(B)(4) and Subsection A herein, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional land surveyor by the board; or

3. the applicant for licensure as a professional land surveyor shall be a military spouse who holds a current, valid license to engage in the practice of land surveying issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that are substantially equivalent to or exceed the requirements for licensure under R.S. 37:693(B)(4) and Subsection A herein, who can demonstrate competency in the practice of land surveying through an oral interview by the board, who has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice land surveying in Louisiana at the time the act was committed, who is in good standing with and has not been disciplined by the agency that issued the license in the other jurisdiction, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional land surveyor by the board.

C. The provisions of Paragraphs 1 and 2 of Subsection B shall not apply to any individual who received a dishonorable discharge from the military. The provisions of Paragraph 3 of Subsection B shall not apply to a military spouse whose spouse received a dishonorable discharge from the military.

D. In Subsections B and C, the term *military* shall mean the United States military.

E. The authority for the executive director to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688 and 37:3651.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:244 (August 1976), amended LR 2:352 (November 1976), LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:645 (December 1981), LR 11:362 (April 1985), LR 16:773 (September 1990), LR 19:56 (January 1993), amended by the Department of Transportation and

Development, Professional Engineering and Land Surveying Board, LR 27:1029 (July 2001), LR 30:1713 (August 2004), LR 32:1619 (September 2006), LR 35:1909 (September 2009), LR 37:2413 (August 2011), LR 38:2564 (October 2012), LR 39:2802 (October 2013).

§911. Temporary Permit to Practice Land Surveying

A. A military-trained individual or military spouse may be granted a written temporary permit to practice professional land surveying for the period from the time the individual has applied to the board for licensure pursuant to §909.B until either the license has been granted or notice of denial of licensure has been issued, provided such individual holds a current, valid license to engage in the practice of land surveying issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that are substantially equivalent to or exceed the requirements for licensure under R.S. 37:693(B)(4) and §909.A, and provided further that before beginning such temporary practice in this state, the individual shall have applied to the board, paid the prescribed fee, and received a temporary permit, and upon the conclusion of such work, he/she shall advise the board as to the period of time that he/she has practiced in the state under such temporary permit.

B. The provisions of Subsection A shall not apply to any individual who received a dishonorable discharge from the military or to a military spouse whose spouse received a dishonorable discharge from the military.

C. In Subsections B and C, the term *military* shall mean the United States military.

D. The authority for the executive director to issue a temporary permit can only be granted by the board.

E. The fee for a temporary permit shall be equal to the fee paid by an applicant applying for licensure as a professional land surveyor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3651.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 39:2803 (October 2013).

Donna D. Sentell
Executive Director

1310#018

Notices of Intent

NOTICE OF INTENT

Department of Children and Family Services Division of Programs Licensing Section

Licensing Class “A” Regulations for Child Care Centers
(LAC 67:III.7302, 7303, 7304, 7305, 7311,
7315, 7317, 7331, 7333, and 7335)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section in accordance with provisions of the Administrative Procedure Act, R.S. 49:953(A) proposes to amend LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333, and 7335.

In accordance with R.S. 46:1430, this Rule allows the Department of Children and Family Services (DCFS), in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for specific violations, including violations of requirements related to supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, or failing to report critical incidents, if such condition or occurrence does not pose an imminent threat to the health, safety, rights, or welfare of a child. These civil fines would not be more than \$250 per day for each assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2000. In addition, the Rule provides for a process of appeal and notes that all civil fines collected from providers will be placed in the Child Care Licensing Trust Fund for the education and training of employees, staff, or other personnel of child care facilities and child-placing agencies. The Rule also offers clarification and revisions to the specific areas for which a fine may be assessed to include supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, and critical incidents. In accordance with R.S. 46:1409.B (10), the Rule includes procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class “A” Regulations for Child Care Centers

§7302. Authority

A. - E. ...

F. The following is a listing of individuals by organizational type who are considered owners for licensing purposes.

1. *Individual Ownership*—individual and spouse;
2. *Partnership*—all limited or general partners and managers, including but not limited to, all persons registered

as limited or general partners with the Secretary of State’s Corporations Division;

3. *Head Start*—individual responsible for supervising facility directors;

4. *Church Owned, Governmental Entity, or University Owned*—any clergy and/or board member that is present in the child care facility during the hours of operation or when children are present. Clergy and/or board members not present in the child care facility shall provide an annual statement attesting to such;

5. *Corporation* (includes limited liability companies)—any person who has 25 percent or greater share in the ownership or management of the business or who has less than a 25 percent share in the ownership or management of the business and meets one or more of the criteria listed below. If a person has less than a 25 percent share in the ownership or management of the business and does not meet one or more of the criteria listed below, a signed, notarized attestation form shall be submitted in lieu of providing a criminal background clearance. This attestation form is a signed statement which shall be updated annually from each owner acknowledging that he/she has less than a 25 percent share in the ownership or management of the business and that he/she does not meet one or more of the criteria below:

- (a). has unsupervised access to the children in care at the child care facility;
- (b). is present in the child care facility during hours of operation;
- (c). makes decisions regarding the day-to-day operations of the child care facility;
- (d). hires and/or fires child care staff including the director/director designee; and/or
- (e). oversees child care staff and/or conducts personnel evaluations of the child care staff.

G. All owners of a child day care facility shall provide documentation of a fingerprint based satisfactory criminal record check (CBC) from Louisiana State Police as required by R.S. 46:51.2., R.S. 15:587.1, and R.S. 1491.3. A copy of the criminal background check shall be submitted for each owner of a child care facility with an initial application, a change of ownership application, a change of location application, and/or an application for renewal of a child day care license. No person with a criminal conviction or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, shall directly or indirectly own, operate, and/or participate in the governance of a child care facility. In addition, neither an owner, nor a director, nor a director designee shall have a conviction of a felony conviction of, plea of guilty, or nolo contendere to any of the following crimes of fraud: 18 U.S.C. 287, 18 U.S.C. 134, R.S. 14:67.11, R.S. 14:68.2, R.S. 14:70, R.S. 14:70.1, R.S. 14:70.4, R.S. 14:70.5, R.S. 14:70.7, R.S. 14:70.8, R.S. 14:71, R.S. 14:71.1, R.S. 14:71.3, R.S. 14:72, R.S. 14:72.1, R.S. 14:72.1.1, R.S. 14:72.4, R.S. 14:72.5, R.S. 14:73.5, and R.S. 14:133.

1. An owner may provide a certified copy of their criminal background check obtained from the Louisiana

Bureau of Criminal Identification and Information Section of the Louisiana State Police to Licensing. If an owner provides a certified copy of their criminal background check obtained from the Louisiana State Police, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. An original certified copy or a photocopy of the certified copy shall be kept on file at the facility in which the individual currently owns/operates. However, prior to the one year expiration of the certified criminal background check, a new fingerprint based satisfactory criminal background check shall be obtained from Louisiana State Police in order for the individual to continue to be eligible to own or operate the child care facility. If the clearance is not obtained prior to the one year expiration of the certified criminal background check, the owner is no longer eligible to own or operate the child care facility.

2. New members/owners added to a partnership, church, corporation, limited liability corporation or governmental entity where such change does not constitute a change of ownership for licensing purposes shall provide documentation of a satisfactory criminal record check by Louisiana State Police obtained in the same manner as those required by R.S. 46:51.2 and R.S. 15:587.1. No person with a criminal conviction or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, shall directly or indirectly own, operate or participate in the governance of a child care facility.

3. Every owner shall submit the criminal background check with the initial application or, in the case of an existing facility, with the application for renewal of the license. The criminal background check shall indicate that he or she has not been convicted of or pled guilty or nolo contendere to any offense enumerated in R.S. 15:587.1. If the criminal background check shows that any owner has been convicted of or pled guilty or nolo contendere of any enumerated offense under R.S. 15:587.1, the owner or director shall submit the information to the Licensing Section management staff within 24 hours or no later than the next business day, whichever is sooner, upon receipt of the result.

H. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the owner being on the premises of the child care facility, shall be updated annually at the time of licensure renewal, at any time upon the request of DCFS, and within 24 hours or no longer than the next business day, whichever is shorter, of any owner receiving notice of a justified (valid) finding of child abuse and/or neglect against them. If information is known to or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse and/or neglect of a child, the individual shall have a determination by the Risk Evaluation Panel or a ruling by the Division of Administrative Law (DAL) that the individual does not pose a risk to children in order to continue to own or operate a licensed child care facility.

1. Within 24 hours or no later than the next business day, whichever is shorter, of current owners receiving notice of a justified (valid) finding of child abuse and/or neglect against them, an updated state central registry disclosure

form (SCR 1) shall be completed by the owner and submitted to Licensing Section management staff as required by R.S. 46:1414.1. The owner shall request a risk evaluation assessment in accordance with LAC 67:1.305 within 10 calendar days from completion of the state central registry disclosure form or the license shall be revoked. Immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner, at any and all times when he/she is in the presence of a child or children, shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for supervising the owner shall have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect. Under no circumstances may an owner with a justified finding be left alone and unsupervised with a child or children pending the disposition of the Risk Evaluation Panel or the DAL determination that the owner does not pose a risk to any child and/or children in care. An owner supervised by an employee who does not have a satisfactory disclosure form on file as provided in this subsection shall be deemed to be alone and unsupervised.

a. Any owner with a justified (valid) finding of abuse and/or neglect on the state central registry must submit, together with the SCR-1 required above either:

i. a written, signed, and dated statement to Licensing Section management staff acknowledging that they are aware of the supervision requirements and understand that under no circumstances are they to be left alone and unsupervised with a child or children and that they shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for supervising the owner shall have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect; or

ii. a written, signed, and dated statement to Licensing Section management staff that he/she will not be on the premises of the facility at any time when a child is present nor during the facility's hours of operation.

b. If the Risk Evaluation Panel determines that the owner poses a risk to children and the individual does not appeal the determination within the required timeframe, the owner shall no longer be eligible to own or operate a child care facility.

c. If the Risk Evaluation Panel determines that the owner poses a risk to children and the individual appeals the determination to the DAL within the required timeframe, the owner shall continue to be under direct supervision when in the presence of a child or children on the child care premises. Supervision must continue until receipt of a ruling from the DAL that the owner does not pose a risk to children.

d. If the DAL upholds the Risk Evaluation Panel's determination that the owner poses a risk to children, the owner shall no longer be eligible to own or operate a child care facility.

2. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form at the time of application to the DCFS Licensing Section. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the

state central registry, the application shall be denied unless the owner requests a risk evaluation assessment on the state central registry risk evaluation request form (SCR 2) within the required timeframe. DCFS will resume the licensure process when the owner provides the written determination by the Risk Evaluation Panel or the DAL that they do not pose a risk to children.

a. If the Risk Evaluation Panel determines that the prospective owner poses a risk to children and the individual does not appeal the determination within the required timeframe, the prospective owner shall withdraw the application within 14 calendar days of the mailing of the DAL decision or the application shall be denied.

b. If the Risk Evaluation Panel determines that the prospective owner poses a risk to children and the individual appeals the determination to the DAL within the required timeframe, the department shall not proceed with the licensure process until a ruling is made by the DAL that the owner does not pose a risk to children. In addition, if the owner/operator is operating legally with six or less children as defined in R.S 46:1403, the owner shall submit:

i. a written, signed, and dated statement to Licensing Section management staff acknowledging that they are aware of the supervision requirements and understand that under no circumstances are they to be left alone and unsupervised with a child or children and that they shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for supervising the owner shall have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect; or

ii. a written, signed, and dated statement to Licensing Section management staff that he/she will not be on the premises of the facility at any time when a child is present nor during the facility's hours of operation; or

iii. If the owner/operator is not providing care for any children, a written, signed dated statement to Licensing Section management staff shall note that the owner/operator is not caring for any children and will not care for children prior to receiving a license.

c. If the DAL upholds the Risk Evaluation Panel determination that the prospective owner poses a risk to children, the prospective owner shall withdraw the application within 14 calendar days of the mailing of the DAL decision or the application shall be denied.

3. State Central Registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the DAL ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation.

4. Any information received or knowledge acquired that a current or prospective owner and/or operator has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) finding of abuse or neglect shall be reported in writing to Licensing Section management staff as soon as possible, but no later than the close of business on the next business day.

5. Any state central registry disclosure form, Risk Evaluation Panel finding, and DAL ruling that is maintained in a child care facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and/or neglect.

I. Critical Violations/Fines

1. In accordance with R.S. 46:1430, when a provider is cited for violations in the following areas, the Department (DCFS) may at its discretion elect to impose sanctions, revoke a license, or both:

a. §7302.G and/or §7311.A.5 and/or §7311.B - criminal background check;

b. §7302.H and/or §7311.A.6 - state central registry disclosure;

c. §7303.F.1 and/or §7303.F.5 - critical incidents;

e. §7315.A - D - ratio,

d. §7317 - supervision; and/or

f. §7331.N - motor vehicle.

2. The option of imposing other sanctions does not impair the right of DCFS to revoke and/or not renew a provider's license to operate if it determines that the violation poses an imminent threat to the health, safety, rights, or welfare of a child or children. Only when the department finds that the violation does not pose an imminent threat to the health, safety, rights, or welfare of a child or children will the department consider sanctions in lieu of revocation or non-renewal; however, the absence of such an imminent threat does not preclude the possibility of revocation or non-renewal in addition to sanctions, including fines.

3. In determining whether multiple violations of one of the above categories has occurred, both for purposes of this section and for purposes of establishing a history of non-compliance, all such violations cited during any 24 month period shall be counted, even if one or more of the violations occurred prior to the adoption of the current set of standards. If one or more of the violations occurred prior to adoption of the current set of standards, a violation is deemed to have been repeated if the regulation previously violated is substantially similar to the present rule.

4.a. For the first violation of one of the aforementioned categories, if the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur.

b. The warning letter shall include a directed Corrective Action Plan (CAP) which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response to the CAP within 14 calendar days of receipt of the letter. Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in either the assessment of a civil fine, revocation/non-renewal of license, or both.

5.a. For the second violation of one of the same aforementioned categories within a 24 month period, provider will be assessed a civil fine of up to \$250 per day

for violation of each of the aforementioned categories (if same category cited twice) and fined for each day the provider was determined to be out of compliance with one of the aforementioned categories according to the following schedule of fines:

b. The base fine level for all violations shall be \$200 per day. From the base fine level, factor in any applicable upward or downward adjustments, even if the adjustment causes the total to exceed \$250. If the total fine after all upward and downward adjustments exceeds \$250, reduce the fine for the violation to \$250 as prescribed by law.

i. If the violation resulted in death or serious physical or emotional harm to a child, or placed a child at risk of death or serious physical or emotional harm, increase the fine by \$50.

ii. If a critical violation for child/staff ratio is cited and provider was found to have three or more children above the required ratio, increase the fine by \$50.

iii. If a critical violation for child/staff ratio is cited for failure to have a minimum of two staff present, increase the fine by \$50.

iv. If the provider had a previous license revoked for the same critical violation cited, increase the fine by \$25.

v. If a critical violation for supervision was cited due to a child being left alone outdoors, increase the fine by \$25.

vi. If the age of the child cited in the child/staff ratio critical violation is four years of age or younger, increase the fine by \$25.

vii. If the age of the child cited in the supervision critical violation is four years of age or younger, increase the fine by \$25.

viii. If the critical violation was cited and occurred despite the objective good faith best efforts of licensee to comply, decrease the fine by \$25.

ix. If a critical violation was cited for the provider's incomplete documentation of the motor vehicle check, decrease the fine by \$25.

x. If the cited critical violation was for annual state central registry disclosure forms, decrease the fine by \$25.

xi. If the provider self-reported the incident which caused the critical violation to be cited, decrease the fine by \$25.

6. For the third violation of one of the same aforementioned categories within a 24 month period, the provider's license may be revoked.

7. The aggregate fines assessed for violations determined in any consecutive 12 month period shall not exceed \$2,000. If a critical violation in a different category is noted by DCFS that warrants a fine and the provider has already reached the maximum allowable fine amount that could be assessed by the department in any consecutive twelve month period as defined by the law and the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur within the 12 month period. The warning letter shall include a directed CAP which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain

compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response to the CAP within 14 calendar days of receipt of the letter. Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in revocation/non-renewal of license.

J. Departmental Reconsideration And Appeal Procedure For Fines

1. When a fine is imposed under these regulations, the Department shall notify the director or owner by letter that a fine has been assessed due to deficiencies cited at the facility and the right of departmental reconsideration. The notification may be sent by certified mail or hand delivered to the facility. If the director or owner is not present at the facility, delivery of the written reason(s) for such action may be made to any staff of the facility. Notice to a staff shall constitute notice to the facility of such action and the reasons therefore. The letter shall specify the dates and the violation cited for which the fine(s) shall be imposed. Fines are due within 30 calendar days from the date of receipt of the letter unless the provider request a reconsideration of the fine assessment. The provider may request reconsideration of the assessment by asking DCFS for such reconsideration in writing within 10 calendar days from the date of receipt of the letter. A request for reconsideration shall include a copy of the letter from the Licensing Section that notes the reasons for assessment of the fine together with the specific reasons the provider believes assessment of the fine to be unwarranted and shall be mailed to: Department of Children and Family Services, Licensing Section, P.O. Box 260035 Baton Rouge, LA 70826. If the provider withdraws the request for reconsideration, the fine is payable within seven calendar days of the withdrawal or on the original date that the fine was due, whichever is later.

2. The department shall advise the director or owner by letter of the decision of DCFS after reconsideration and the right to appeal. The notification may be sent by certified mail or hand delivered to the facility. If the director or owner is not present at the facility, delivery of the written decision may be made to any staff of the facility. Notice to a staff shall constitute notice to the facility of such action.

a. If DCFS finds that the Licensing Section's assessment of the fine is justified, the provider shall have 15 calendar days from the receipt of the reconsideration letter to appeal the decision to the DAL. A request for appeal shall include a copy of the letter from the Licensing Section that notes the reasons for assessment of the fine and a copy of the reconsideration decision together with the specific areas of the decision the appellant believes to be erroneous and/or the specific reasons the decision is believed to have been reached in error, and shall be mailed to: Department of Children and Family Services, Appeals Section, P.O. Box 2944, Baton Rouge, LA 70821-9118.

b. The DCFS Appeals Section shall notify the DAL of receipt of an appeal request. Division of Administrative Law shall conduct a hearing in accordance with the Administrative Procedure Act within 30 days of the receipt thereof, and shall render a decision not later than 60 days from the date of the hearing. The appellant will be notified

by letter from DAL of the decision, either affirming or reversing the department's decision.

c. If the provider has filed a timely appeal and the department's assessment of fines is affirmed by an administrative law judge of the DAL, the fine shall be due within 30 calendar days after mailing notice of the final ruling of the administrative law judge or, if a rehearing is requested, within 30 calendar days after the rehearing decision is rendered. The provider shall have the right to seek judicial review of any final ruling of the administrative law judge as provided in the Administrative Procedure Act. If the appeal is dismissed or withdrawn, the fines shall be due and payable within seven calendar days of the dismissal or withdrawal. If a judicial review is denied or dismissed, either in district court or by a court of appeal, the fines shall be due and payable within seven calendar days after the provider's suspensive appeal rights have been exhausted.

3. If the provider does not appeal within 15 calendar days of receipt of the department's reconsideration decision, the fine is due within 30 calendar days of receipt of the department's reconsideration decision and shall be mailed to Department of Children and Family Services, Licensing Section, P.O. Box 260035 Baton Rouge, LA 70826. If the provider files a timely appeal, the fines shall be due and payable on the date set forth in §7302.J.2.c. If the provider withdraws the appeal, the fine is payable within seven calendar days of the withdrawal or on the original date that the fine was due, whichever is later.

4. If the provider does not pay the fine within the specified timeframe, the license shall be immediately revoked and the department shall pursue civil court action to collect the fines, together with all costs of bringing such action, including travel expenses and reasonable attorney fees. Interest shall begin to accrue at the current judicial rate on the day following the date on which the fines become due and payable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1107 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2755 (December 2007), amended LR 36:332 (February 2010), LR 36:847 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:811 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 39:66 (January 2013), amended LR 40:

§7303. Procedures

A. - A.3.

4. Change Of Ownership (CHOW)

a. Any of the following constitutes a change of ownership:

- i. change in the federal tax id number;
- ii. change in the state tax id number;
- iii. change in profit status;
- iv. any transfer of the child care business from an individual or juridical entity to any other individual or juridical entity;

v. termination of child care services by one owner and beginning of services by a different owner without a break in services to the children; and/or

vi. addition of an individual to the existing ownership on file with the Licensing Section.

b. Although the following does not constitute a change of ownership for licensing purposes, a change of information form is required. The change of information form shall be submitted to the Licensing Section within 14 calendar days of the change.

i. if individual ownership, upon death of the spouse and prior to execution of the estate;

ii. if individual ownership, upon death of the spouse and execution of the estate, if the surviving spouse remains as the only owner;

iii. if individual ownership, undergoing a separation or divorce until a judicial termination of the community assets and gains, signed by both parties;

iv. changes in board members for churches, corporations, limited liability companies, universities, or governmental entities;

v. any removal of a person from the existing organizational structure under which the child day care facility is currently licensed.

c. A facility facing adverse action shall not be eligible for a CHOW. An application involving a center facing adverse action shall be treated as an initial application rather than a change of ownership.

d. When a facility changes ownership, the current license is not transferable. Prior to the ownership change and in order for a temporary license to be issued, the new owner shall submit a CHOW application packet containing the following:

i. a completed application and full licensure fee as listed in §7303.B.3 based on current licensed capacity or requested capacity, whichever is less;

ii. current (as noted in §7303.A.4.e) Office of State Fire Marshal approval;

iii. current (as noted in §7303.A.4.e) Office of Public Health approval;

iv. current (as noted in §7303.A.4.e) City Fire approval (if applicable);

v. a sketch or drawing of the premises including classrooms, buildings and enclosed play area;

vi. a list of staff to include staff's name and position;

vii. documentation of director qualifications as listed in §7310.B;

viii. signed and dated statement from current owner noting last day care will be provided at the facility;

ix. signed and dated statement from new owner noting first day care will be provided at the facility;

x. documentation of director designee qualifications, if applicable as listed in §7310.B;

xi. three dated and signed reference letters on the director attesting affirmatively to his/her character, qualifications, and suitability to care and supervise children;

xii. three dated and signed reference letters on director designee (if applicable) attesting affirmatively to his/her character, qualifications, and suitability to care and supervise children;

xiii. documentation of a fingerprint-based satisfactory criminal record clearance for all staff, including owners and operators. CBC shall be dated no earlier than 30 days before the application has been received by the Licensing Section. (the prior owner's documentation of satisfactory criminal background checks is not transferrable); and

xiv. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff including owners and operators or a determination from the Risk Assessment Panel or Division of Administrative Law (DAL) noting that the individual does not pose a risk to children (the prior owner's documentation of state central registry disclosure forms is not transferrable).

e. The prior owner's current Office of State Fire Marshal, Office of Public Health, and City Fire approvals are only transferrable for 60 calendar days. The new owner shall obtain approvals dated after the effective date of the new license from these agencies within 60 calendar days. The new owner will be responsible for forwarding the approval or extension from these agencies to the Licensing Section.

f. A licensing inspection shall be conducted within 60 calendar days to verify that the provider is in compliance with the minimum standards. At this time, licensing staff shall complete a measurement of the facility and enclosed, outdoor play yard. Upon review of the space, the capacity of the facility may be reduced or increased as verified by new measurement of the facility.

g. All staff/children's information shall be updated under the new ownership prior to or on the first day care is provided by the new owner.

h. If all information in §7303.A.4.d is not received prior to or on the last day care is provided by the existing owner, the new owner shall not operate until a license is issued. The new owner is not authorized to provide child care services until the licensure process is completed in accordance with §7303.A.1-2.

A.5. - C.4. ...

5. When a child care provider has been cited during an on-site inspection for violation of a licensing standard which the department deems non-critical, the department shall allow the provider an opportunity to immediately remedy the non-critical area of non-compliance if allowing such immediate correction does not endanger the health, safety, or well-being of any child in care. The remedy shall be included in the documentation noted by the department. The department shall exercise its discretion in determining which areas of the licensing standards are deemed critical under the particular circumstances which caused the deficiency to be cited.

a. Licensing staff shall cite the non-critical deficiencies at the time of the inspection and shall note in the inspection findings whether the deficiency was corrected during the licensing inspection. If all non-critical deficiencies are verified as corrected during the inspection and no critical areas of non-compliance are cited, no follow up inspection is required. If non-critical deficiencies are not verified as corrected during the inspection, or if deficiencies in critical areas are cited, a follow-up inspection may be conducted to determine that corrections have been made and

maintained in a manner consistent with the licensing standards.

b. The statement of deficiencies shall be placed on the internet for public viewing unless posting the information violates state or federal law or public policy, and the posted deficiency statements shall note which areas of non-compliance were verified as corrected at the time of the licensing inspection.

c. Areas of non-critical non-compliance may include but are not limited to posted items, paperwork, children's records, documentation of training, furnishing/equipment, and emergency/evacuation procedures.

D. - E.4. ...

F.1. The director shall report all critical incidents as specified below. For the following critical incidents, immediate notification shall be made to emergency personnel and/or law enforcement, as appropriate. In addition, the child's parent shall be contacted. Once contact or attempted contact has been made to child's parent, the director shall verbally notify Licensing Section Management staff immediately. The verbal report shall be followed by a written report within 24 hours:

- a. death of a child while in the care of the provider;
- b. illness or injury requiring hospitalization or professional medical attention of a child while in the care of the provider;
- c. any child leaving the facility and/or play yard unsupervised or with an unauthorized person;
- d. any child left unsupervised on the play yard;
- e. use of corporal punishment;
- f. suspected abuse and/or neglect by facility staff;
- g. any child given the wrong medication or an overdose of the correct medication;
- h. leaving any child in a vehicle unsupervised or unsupervised on a field trip;
- i. fire on the child care premises if children are present;
- j. any serious and unusual situation that affects the safety and/or well-being of a child or children in the care of the provider;
- k. any emergency situation that requires sheltering in place;
 - l. implementation of facility lock-down procedures, and/or temporarily relocating children;
 - m. any loss of power over two hours while children are in care;
 - n. an accident involving transportation of children in which children were injured; and/or
 - o. a physical altercation between adults in the presence of children on the child care premises.

2. Director shall ensure that appropriate steps have been taken to ensure the health and safety of the children in sheltering in place and/or lock down situations prior to notifying parents and/or Licensing Section management staff.

3. Within 24 hours or the next business day, the director shall verbally notify Licensing Section management staff of the following reportable incidents. The verbal report shall be followed by a written report within 24 hours:

- a. fire on the child care premises if children not present;

- b. structural damage to the facility; and/or
 - c. an accident involving transportation of children in which children were not injured.
4. The written report to DCFS Licensing Section for critical incidents and reportable incidents shall include the following information:
- a. name of facility;
 - b. address of facility;
 - c. license number;
 - d. contact number;
 - e. date of incident;
 - f. time of incident;
 - g. name of child or children involved;
 - h. name of staff involved and other staff present;
 - i. description of incident;
 - j. date and time of notification to parents (to include attempted contacts), law enforcement, and Child Welfare (CW), if applicable;
 - k. signature of person(s) notifying law enforcement, emergency personnel, CW, and parents;
 - l. corrective action taken and/or needed to prevent reoccurrence;
 - m. date and signature of staff completing report; and
 - n. signature of parent, with date and time of signature.

5. The director shall contact or attempt to contact a child's parent immediately upon the occurrence of any critical incident as noted in §7303.F.1 or reportable incident as noted in §7303.F.3.c. If the parent cannot be contacted by phone the director shall notify the child's parent verbally at the time the child is picked up from the facility.

G. - H.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended LR 36:333 (February 2010), LR 36:832 (April 2010), repromulgated LR 36:1272 (June 2010), amended LR 36:1279 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section and Economic Stability and Self-Sufficiency Section, LR 36:2521 (November 2010), repromulgated 37:513 (February 2011), amended by the Department of Children and Family Services, Division of Programs, LR 37:812 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7304. Definitions

* * *

Change of Ownership—a transfer of ownership of a currently licensed facility that is in operation and caring for children, to another entity without a break in service to the children currently enrolled.

* * *

Corporation—any entity incorporated in Louisiana or incorporated in another State, registered with the Secretary of State in Louisiana, and legally authorized to do business in Louisiana.

* * *

Individual Owner—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university, or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through a judicial separation of property agreement or acquired via a judicial termination of the community of acquets and gains.

* * *

Juridical Entity—corporation, partnership, limited-liability company, church, university, or governmental entity.

* * *

Natural Person—a human being and, if that person is married and not judicially separated or divorced, the spouse of that person.

* * *

Non-Vehicular Excursion—any activity that takes place outside of the licensed area (play yard and facility), that is within a safe, reasonable walking distance, and that does not require transportation in a motor vehicle. This does not include walking with children to and from schools.

Owner or Operator—The individual who exercises ownership or control over a child day care facility, whether such ownership/control is direct or indirect.

Ownership—The right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law.

1. *Direct Ownership*—when a natural person is the immediate owner of a child day care facility, i.e., exercising control personally rather than through a juridical entity.

2. *Indirect Ownership*—when the immediate owner is a juridical entity.

Partnership—includes any general or limited partnership licensed or authorized to do business in this state. The owners of a partnership are its limited or general partners and any managers thereof.

* * *

Water Activity—a water-related activity in which children are in, on, near and accessible to, or immersed in a body of water, including but not limited to a swimming pool, wading pool, water park, lake, river or beach, etc.

Water Play Activity—a water-related activity in which there is no standing water, including but not limited to fountains, sprinklers, water slip and slides, water tables, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1111 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2758 (December 2007), amended LR 36:848 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 39:470 (March 2013), amended LR 40:

§7305. General Requirements

A. - M. ...

N. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited.

Providers and child care staff shall not permit an individual convicted of a sex offense, as defined in R.S. 15:541, physical access to a child day care facility, as defined in R.S. 46:1403.

O. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the Licensing Section management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2759 (December 2007), amended LR 36:333 (February 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:812 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 39:470 (March 2013), amended LR 40:

§7311. Personnel Records

A. - A.4. ...

5. documentation of a fingerprint based satisfactory criminal record check (CBC) from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being hired by or present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, shall be hired by or present in any capacity in any licensed child care facility. CBC shall be dated no earlier than 30 days of the individual's hire date at the facility. If a staff person leaves the employment of the provider for more than 30 calendar days, a new fingerprint based CBC is required prior to the individual being rehired by or present on the child care premises. A criminal background check is satisfactory for purposes of this section if it shows no arrests for any enumerated offense or, if an arrest is shown on the background check, the background check or certified documentation from the jurisdiction of arrest affirmatively shows that the charges were disposed of without a conviction for any excludable offense. A plea of guilty or nolo contendere shall be deemed a conviction.

a. If an individual applicant has previously obtained a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police such certified copy shall be acceptable as meeting the CBC requirements for employees and/or staff. If an individual provides a certified copy of their criminal background check which he/she has previously obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. An original certified copy or a photocopy of the certified copy shall be kept on file at the facility in which the individual is currently employed/providing child care services. However, prior to the one year expiration of the certified criminal background check, a new fingerprint based satisfactory criminal background check shall be obtained from Louisiana State

Police in order for the individual to continue employment/providing child care services at the center. If the clearance is not obtained prior to the one year expiration of the certified criminal background check, the individual is no longer allowed on the child care premises until a clearance is received.

6. documentation of a state central registry disclosure form (SCR 1) completed by the staff (paid and/or non paid) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the child care facility, shall be updated annually, at any time upon the request of DCFS, and within 24 hours or no later than the next business day, whichever is sooner, of any staff receiving notice of a justified (valid) finding of child abuse and/or neglect. Any current or prospective employee, or volunteer of a child care facility licensed by DCFS is prohibited from working in a child care facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse and/or neglect of a child, unless there is a finding by the Risk Evaluation panel or a ruling by the Division of Administrative Law (DAL) that the individual does not pose a risk to children.

a. The prospective paid and/or non paid staff (employee/volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

i. If a prospective staff (employee/volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment or volunteer duties at that time due to the state central registry disclosure. The director will provide the prospective employee/volunteer with the state central registry risk evaluation request form (SCR 2) so that a risk assessment evaluation may be requested.

ii. Individuals are eligible for employment/volunteer services if and when they provide written determination from the Risk Evaluation Panel or the DAL noting that they do not pose a risk to children.

b. If a current staff receives notice of a justified (valid) finding of child abuse and/or neglect against them, he or she shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) finding as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the Licensing Section management staff within 24 hours or no later than the next business day, whichever is sooner, or upon being on the child care premises, whichever is sooner. Staff will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be terminated immediately.

i. If the staff person will no longer be employed at the center, the provider shall immediately submit a signed, dated statement noting the individual's name and termination date.

ii. Immediately upon receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment, the staff person with the justified (valid) finding, when in the presence of

children shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for such supervision must have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect, or a determination from either the Risk Evaluation Panel or the DAL that the supervising employee does not pose a risk to children. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with a child or children. The provider shall submit a written statement to Licensing Section management staff acknowledging that the staff person with the justified finding will not be left alone and unsupervised with a child or children pending the disposition by the Risk Evaluation Panel or the DAL that the staff person does not pose a risk to children. When the aforementioned conditions are met, the staff (employee/volunteer) may be counted in child/staff ratio. A person supervised by an employee who does not have a satisfactory disclosure form on file as provided in this subsection shall be deemed to be alone and unsupervised.

(a). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual does not appeal the finding to the DAL within the required timeframe, the staff (employee/volunteer) shall be terminated immediately.

(b). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the DAL within the required timeframe, the staff (employee/volunteer) shall continue to be under direct supervision while in the presence of children by another paid staff of the facility who has not disclosed that they have a justified (valid) finding on the state central registry until a ruling is made by the DAL that they do not pose a risk to children. Supervision shall not end until receipt of the ruling from the DAL that the employee does not pose a risk to children.

(c). If the DAL upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

iii. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the DAL ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation.

iv. Any information received or knowledge acquired that a current or prospective volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) finding of abuse and/or neglect shall be reported in writing to a Licensing Section management staff as soon as possible, but no later than the close of business on the next business day.

v. Any state central registry disclosure form, Risk Evaluation Panel finding, and DAL ruling that is maintained in a child care facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and/or neglect.

B. All independent contractors including therapeutic professionals and extracurricular personnel, e.g. contracted

transportation drivers, computer instructors, dance instructors, librarians, tumble bus personnel, speech therapists, licensed health care professionals, state-certified teachers employed through a local school board, Louisiana Department of Education (LDE) staff, local school district staff, art instructors, and other outside contractors shall have the following information on file:

1. documentation of a fingerprint based satisfactory criminal record check (CBC) from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility or providing services for the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, shall be present in any capacity in any licensed child care facility. CBC shall be dated prior to the individual being present on the child care premises. A criminal background check is satisfactory for purposes of this section if it shows no arrests for any enumerated offense or, if an arrest is shown on the background check, the background check or certified documentation from the jurisdiction of arrest affirmatively shows that the charges were disposed of without a conviction for any excludable offense. A plea of guilty or nolo contendere shall be deemed a conviction.

a. If an individual has previously obtained a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police such certified copy shall be acceptable as meeting the CBC requirements for independent contractors. If an individual provides a certified copy of their criminal background check which he/she has previously obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. An original certified copy or a photocopy of the certified copy shall be kept on file at the facility in which the individual is currently providing child care services. However, prior to the one year expiration of the certified criminal background check, a new fingerprint based satisfactory criminal background check shall be obtained from Louisiana State Police in order for the individual to continue providing child care services at the center. If the clearance is not obtained prior to the one year expiration of the certified criminal background check, the individual is no longer allowed on the child care premises until a clearance is received.

b. For the first school year that a LDE staff person or local school district staff person provides services to a child at a child care facility, that LDE staff person or local school district staff person shall provide documentation of a fingerprint based satisfactory criminal record check as required by §7311.A.5 or shall provide the original, completed, signed, notarized, DCFS approved affidavit to the provider prior to being present and working with a child or children at the facility. A photocopy of the original affidavit shall be kept on file at the facility. This affidavit will be acceptable for the entire school year noted in the text of the affidavit and expires on May 31 of the current school year. For all subsequent school years following the first year, the LDE staff or local school district staff person shall present a new affidavit or an original, completed, and signed letter from the superintendent of the school district or

designee or superintendent of LDE or designee. The provider will need to view the original letter presented by the LDE staff or local school district staff person and keep a photocopy of the original letter on file at the facility. This letter will be acceptable for the entire school year noted in the text of the letter and expires on May 31 of the current school year. The letter is acceptable only if the following conditions are met:

- i. the LDE staff person or local school district staff person has remained employed with the same school district as noted in the affidavit the provider has on file;
- ii. the provider has maintained a copy of the affidavit on file, and
- iii. the letter is presented on school district letterhead or LDE letterhead and signed by the superintendent of the school district or designee or superintendent of LDE or designee.

B.2. - C.3.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1114 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2762 (December 2007), amended by the Department of Children and Family Services, Division of Programs, LR 37:813 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7315. Required Child/Staff Ratios

A. There shall always be a minimum of two staff present during hours of operation when children are present. In addition, child/staff ratios shall be met at all times as the number of children supervised by one staff person shall not exceed the ratios as indicated below. Only those staff members directly involved in child care and supervision shall be considered in assessing child/staff ratio.

Child/Staff	
Ages of Children	Ratio
Infants under 12 months	5:1
One year old	7:1
Two year old	11:1
Three year old	13:1
Four year old	15:1
Five year old	19:1
Six year old and up	23:1

1. ...

2. During naptime, required staffing shall be present in the building to satisfy child/staff ratios and be available to assist as needed (Refer to §7317 regarding supervision requirements).

3. Staff counted for purposes of meeting child/staff ratio shall be awake.

B. ...

C. Child/staff ratio as specified in §7315.A - A.1 shall be met when walking children to and from school.

D. When the nature of a child with special health care needs or the number of children with special health care needs warrants added care, the provider shall add sufficient

staff as deemed necessary by the Licensing Section in consultation with the provider to accommodate for these needs.

E. The DCFS form noting required child/staff ratios shall be posted in each room included in the facility's licensed capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1116 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2764 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7317. Supervision

A. Children shall be supervised at all times in the facility, on the playground, on field trips, and on non vehicular excursions, including all water activities and water play activities.

1. Children shall not be left alone in any room, (excluding the restroom as noted in §7317.B) outdoors, or in vehicles, even momentarily, without a staff present.

2. A staff person shall be assigned to supervise specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff shall be able to state how many children are in their care at all times.

B. Children who are developmentally able may be permitted to go to the restroom on the child care premises independently, provided that:

1. staff member's proximity to children assures immediate intervention to safeguard a child from harm while in the restroom;

2. individuals who are not staff members may not enter the facility restroom area while in use by any child other than their own child;

3. a child five years of age and younger shall be supervised by staff members who are able to hear the child while in the restroom; and

4. a child six years of age and older may be permitted to go and return from the restroom without staff; however, staff must know the whereabouts of the child at all times.

C. When children are outside on the play yard, the staff member shall be able to summon another adult staff without leaving the group unsupervised.

D. Staff shall actively supervise children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

E. Children ages two years and above may be grouped together at rest time with one staff in each room supervising the resting children. If two rooms share a common doorway, one staff may supervise the resting children. If the view of the staff supervising the children is obstructed by an object such as a low shelving unit, children shall be checked by sight by staff continually circulating among the resting children.

F. Areas used by the children shall be lighted in such a way as to allow visual supervision at all times.

G. While on duty with a group of children, staff shall devote their entire time to supervising the children, meeting

the needs of the children, and participating with them in their activities. Staff duties that include cooking, housekeeping, and/or administrative functions shall not interfere with the supervision of children.

H. Individuals who do not serve a purpose related to the care of children or who hinder supervision of the children shall not be present in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1116 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2764 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 39

§7331. General Transportation (Contract, Center-Provided, Parent Provided)

A. - M. ...

N. A visual inspection of the vehicle is required to ensure that no child was left on the vehicle. A staff person shall physically walk through the vehicle and inspect all seat surfaces, under all seats, and in all enclosed spaces and recesses in the vehicle's interior. The staff conducting the visual check shall record the time of the visual check inspection and sign his or her full name, indicating that no child was left on the vehicle. For field trips, whether facility provided or contracted, the vehicle shall be checked and a face-to-name count conducted prior to leaving facility for destination, when destination is reached, before departing destination for return to facility, and upon return to facility. For daily transportation services, the vehicle shall be inspected at the completion of each trip/route prior to the staff person exiting the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1119 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2767 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1207 (May 2012), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7333. Field Trips (Contract, Center-Provided, Parent Provided)

A. - A.1.e. ...

f. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1120 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2768

(December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7335. Daily Transportation (Contract or Center-Provided)

A. - A.1.e. ...

f. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1120 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2768 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? There will be no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule offers clarification to the current Rule in areas which help to ensure that the individuals that own, operate, or govern child care facilities and those that are responsible for the education and supervision of children in child care facilities, have satisfactory criminal background clearances and are not listed on the State Central Registry.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and the family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Impact Statement

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Public Comments

All interested persons may submit written comments through November 26, 2013, to Lisa Andry, Deputy Assistant Secretary, Department of Children and Family Services, P. O. Box 94065, Baton Rouge, LA, 70804-9065.

Public Hearing

A public hearing on the proposed Rule will be held on November 26, 2013 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special

services should contact the bureau of appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Suzy Sonnier
Secretary

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

**RULE TITLE: Licensing Class "A" Regulations
for Child Care Centers**

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

This Rule proposes to amend LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333, and 7335 in accordance with R.S. 46:1430 and R.S. 46:1409.B (10). The proposed rule allows the Department of Children and Family Services (DCFS), in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for certain violations. These civil fines will not exceed \$250 per day for each assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2000. The proposed rule will also provide for a process of appeal, clarifies specific areas for which a fine may be assessed, and include procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

The only cost associated with this proposed rule is the cost of publishing rulemaking which is estimated to be approximately \$6,888 (Federal) in Fiscal Year 2013-2014. This is a one-time cost that is routinely included in the department's budget.

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

A provision of R.S.46:1430 establishes a Child Care Licensing Trust Fund. Monies generated from the civil fines shall be credited to this fund and appropriated for the education and training of employees, staff, or other personnel of child care facilities. DCFS cannot determine the number of child care facilities and child-placing agencies that will be assessed civil fines.

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

Failure by a provider to meet published, established standards with regard to child/staff ratio, supervision, criminal background clearances, state central registry disclosure, and/or critical incident reporting may result in a fee of not more than \$250 dollars per day being assessed, not to exceed \$2000 in a 12 month period.

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

There is no estimated impact on competition or employment.

Brent Villemarette
Deputy Secretary
1310#089

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Children and Family Services
Division of Programs
Licensing Section**

Licensing Class "B" Regulations for Child Care Centers
(LAC 67:III.7355, 7357, 7359, 7361,
7363, 7365, 7371, 7372 and 7385)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section in accordance with provisions of the Administrative Procedure Act, R.S. 49:953(A) proposes to amend LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter B, Sections 7355, 7357, 7359, 7361, 7363, 7365, 7371, 7372 and 7385.

In accordance with R.S. 46:1430, this Rule allows DCFS, in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for specific violations, including violations of requirements related to supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, or failing to report critical incidents, if such condition or occurrence does not pose an imminent threat to the health, safety, rights, or welfare of a child. These civil fines would not be more than \$250 per day for each assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2000. In addition, the Rule provides for a process of appeal and notes that all civil fines collected from providers will be placed in the Child Care Licensing Trust Fund for the education and training of employees, staff, or other personnel of child care facilities and child-placing agencies. The Rule also offers clarification and revisions to the specific areas for which a fine may be assessed to include supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, and critical incidents. In accordance with R.S. 46:1409(B)(10), the Rule includes procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self Sufficiency

Subpart 21. Child Care Licensing

Chapter 73 Day Care Centers

**Subchapter B. Licensing Class "B" Regulations for
Child Care Centers**

§7355. Authority

A. - E. ...

F. The following is a listing of individuals by organizational type who are considered owners for licensing purposes.

1. *Individual Ownership*—individual and spouse.

2. *Partnership*—all limited or general partners and managers, including but not limited to, all persons registered as limited or general partners with the Secretary of State's Corporations Division.

3. *Head Start*—individual responsible for supervising facility directors.

4. *Church Owned, Governmental Entity, or University Owned*—any clergy and/or board member that is present in the child care facility during the hours of operation or when children are present. Clergy and/or board members not present in the child care facility shall provide an annual statement attesting to such;

5. *Corporation* (includes limited liability companies)—any person who has 25 percent or greater share in the ownership or management of the business or who has less than a 25 percent share in the ownership or management of the business and meets one or more of the criteria listed below. If a person has less than a 25 percent share in the ownership or management of the business and does not meet one or more of the criteria listed below, a signed, notarized attestation form shall be submitted in lieu of providing a criminal background clearance. This attestation form is a signed statement which shall be updated annually from each owner acknowledging that he/she has less than a 25 percent share in the ownership or management of the business and that he/she does not meet one or more of the criteria below:

a. has unsupervised access to the children in care at the child care facility;

b. is present in the child care facility during hours of operation;

c. makes decisions regarding the day-to-day operations of the child care facility;

d. hires and/or fires child care staff including the director/director designee; and/or

e. oversees child care staff and/or conducts personnel evaluations of the child care staff.

G. All owners of a child day care facility shall provide documentation of a fingerprint based satisfactory criminal record check (CBC) from Louisiana State Police as required by R.S. 46:51.2., R.S. 15:587.1, and R.S. 1491.3. A copy of the criminal background check shall be submitted for each owner of a child care facility with an initial application, a change of ownership application, a change of location application, and/or an application for renewal of a child day care license. No person with a criminal conviction or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, shall directly or indirectly own, operate, and/or participate in the governance of a child care facility. In addition, neither an owner, nor a director, nor a director designee shall have a conviction of a felony conviction of, plea of guilty, or nolo contendere to any of the following crimes of fraud: 18 U.S.C. 287, 18 U.S.C. 134, R.S. 14:67.11, R.S. 14:68.2, R.S. 14:70, R.S. 14:70.1, R.S. 14:70.4, R.S. 14:70.5, R.S. 14:70.7, R.S. 14:70.8, R.S. 14:71, R.S. 14:71.1, R.S. 14:71.3, R.S. 14:72, R.S. 14:72.1, R.S. 14:72.1.1, R.S. 14:72.4, R.S. 14:72.5, R.S. 14:73.5, and R.S. 14:133.

1. An owner may provide a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police to Licensing. If an owner provides a certified copy of their criminal background check obtained from the Louisiana State Police, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. An original certified copy or a photocopy of the certified copy shall be kept on

file at the facility in which the individual currently owns/operates. However, prior to the one year expiration of the certified criminal background check, a new fingerprint based satisfactory criminal background check shall be obtained from Louisiana State Police in order for the individual to continue to be eligible to own or operate the child care facility. If the clearance is not obtained prior to the one year expiration of the certified criminal background check, the owner is no longer eligible to own or operate the child care facility.

2. New members/owners added to a partnership, church, corporation, limited liability corporation or governmental entity where such change does not constitute a change of ownership for licensing purposes shall provide documentation of a satisfactory criminal record check by Louisiana State Police obtained in the same manner as those required by R.S. 46:51.2 and R.S. 15:587.1. No person with a criminal conviction or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, shall directly or indirectly own, operate or participate in the governance of a child care facility.

3. Every owner shall submit the criminal background check showing that he or she has not been convicted of or pled guilty or nolo contendere to any offense enumerated in R.S. 15:587.1, together with the initial application or, in the case of an existing facility, with the application for renewal of the license. If the criminal background check shows that any owner has been convicted of or pled guilty or nolo contendere to any enumerated offense under R.S. 15:587.1, the owner or director shall submit the information to the Licensing Section management staff within 24 hours or no later than the next business day, whichever is sooner, upon receipt of the result.

H. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the owner being on the premises of the child care facility, shall be updated annually at the time of licensure renewal, at any time upon the request of DCFS, and within 24 hours or no longer than the next business day, whichever is shorter, of any owner receiving notice of a justified (valid) finding of child abuse and/or neglect against them. If information is known to or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse and/or neglect of a child, the individual shall have a determination by the Risk Evaluation Panel or a ruling by the Division of Administrative Law (DAL) that the individual does not pose a risk to children in order to continue to own or operate a licensed child care facility.

1. Within 24 hours or no later than the next business day, whichever is shorter, of current owners receiving notice of a justified (valid) finding of child abuse and/or neglect against them, an updated state central registry disclosure form (SCR 1) shall be completed by the owner and submitted to Licensing Section management staff as required by R.S. 46:1414.1. The owner shall request a risk evaluation assessment in accordance with LAC 67:I.305 within 10 calendar days from completion of the state central registry disclosure form or the license shall be revoked. Immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner, at any and all times when he/she

is in the presence of a child or children, shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for supervising the owner shall have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect. Under no circumstances may an owner with a justified finding be left alone and unsupervised with a child or children pending the disposition of the Risk Evaluation Panel or the DAL determination that the owner does not pose a risk to any child and/or children in care. An owner supervised by an employee who does not have a satisfactory disclosure form on file as provided in this subsection shall be deemed to be alone and unsupervised.

a. Any owner with a justified (valid) finding of abuse and/or neglect on the state central registry must submit, together with the SCR-1 required above either:

i. a written, signed, and dated statement to Licensing Section management staff acknowledging that they are aware of the supervision requirements and understand that under no circumstances are they to be left alone and unsupervised with a child or children and that they shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for supervising the owner shall have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect; or

ii. a written, signed, and dated statement to Licensing Section management staff that he/she will not be on the premises of the facility at any time when a child is present nor during the facility's hours of operation.

b. If the Risk Evaluation Panel determines that the owner poses a risk to children and the individual does not appeal the determination within the required timeframe, the owner shall no longer be eligible to own or operate the child care facility.

c. If the Risk Evaluation Panel determines that the owner poses a risk to children and the individual appeals the determination to the DAL within the required timeframe, the owner shall continue to be under direct supervision when in the presence of a child or children on the child care premises. Supervision must continue until receipt of a ruling from the DAL that the owner does not pose a risk to children.

d. If the DAL upholds the Risk Evaluation Panel's determination that the owner poses a risk to children, the owner shall no longer be eligible to own or operate the child care facility.

2. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form at the time of application to the DCFS Licensing Section. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, the application shall be denied unless the owner requests a risk evaluation assessment on the state central registry risk evaluation request form (SCR 2) within the required timeframe. DCFS will resume the licensure process when the owner provides the written determination by the Risk Evaluation Panel or the DAL that they do not pose a risk to children.

a. If the Risk Evaluation Panel determines that the prospective owner poses a risk to children and the individual does not appeal the determination within the required timeframe, the prospective owner shall withdraw the application within 14 calendar days of the mailing of the DAL decision or the application shall be denied.

b. If the Risk Evaluation Panel determines that the prospective owner poses a risk to children and the individual appeals the determination to the DAL within the required timeframe, the department shall not proceed with the licensure process until a ruling is made by the DAL that the owner does not pose a risk to children. In addition, if the owner/operator is operating legally with six or less children as defined in R.S 46:1403, the owner shall submit:

i. a written, signed, and dated statement to Licensing Section management staff acknowledging that they are aware of the supervision requirements and understand that under no circumstances are they to be left alone and unsupervised with a child or children and that they shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for supervising the owner shall have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect; or

ii. a written, signed, and dated statement to Licensing Section management staff that he/she will not be on the premises of the facility at any time when a child is present nor during the facility's hours of operation; or

iii. If the owner/operator is not providing care for any children, a written, signed dated statement to Licensing Section management staff shall note that the owner/operator is not caring for any children and will not care for children prior to receiving a license.

c. If the DAL upholds the Risk Evaluation Panel determination that the prospective owner poses a risk to children, the prospective owner shall withdraw the application within 14 calendar days of the mailing of the DAL decision or the application shall be denied.

3. State Central Registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the DAL ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation.

4. Any information received or knowledge acquired that a current or prospective owner and/or operator has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) finding of abuse or neglect shall be reported in writing to Licensing Section management staff as soon as possible, but no later than the close of business on the next business day.

5. Any state central registry disclosure form, Risk Evaluation Panel finding, and DAL ruling that is maintained in a child care facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and/or neglect.

I. Critical Violations/Fines

1. In accordance with R.S. 46:1430, when a provider is cited for violations in the following areas, the Department

(DCFS) may at its discretion elect to impose sanctions, revoke a license, or both:

- a. §7355.G and/or §7365.C.4, and/or §7365.C.5 - criminal background check;
- b. §7355.H and/or §7365.C.6 - state central registry disclosure;
- c. §7361.M.1 and/or 7361.M.5 - critical incidents;
- d. §7363.C.1.i and/or 7363.D.2 - motor vehicle;
- e. §7371.A - ratio, and/or;
- f. §7372 - supervision.

2. The option of imposing other sanctions does not impair the right of DCFS to revoke and/or not renew a provider's license to operate if it determines that the violation poses an imminent threat to the health, safety, rights, or welfare of a child or children. Only when the department finds that the violation does not pose an imminent threat to the health, safety, rights, or welfare of a child or children will the department consider sanctions in lieu of revocation or non-renewal; however, the absence of such an imminent threat does not preclude the possibility of revocation or non-renewal in addition to sanctions, including fines.

3. In determining whether multiple violations of one of the above categories has occurred, both for purposes of this section and for purposes of establishing a history of non-compliance, all such violations cited during any 24 month period shall be counted, even if one or more of the violations occurred prior to the adoption of the current set of standards. If one or more of the violations occurred prior to adoption of the current set of standards, a violation is deemed to have been repeated if the regulation previously violated is substantially similar to the present rule.

4.a For the first violation of one of the aforementioned categories, if the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur.

b. The warning letter shall include a directed Corrective Action Plan (CAP) which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response to the CAP within 14 calendar days of receipt of the letter. Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in either the assessment of a civil fine, revocation/non-renewal of license, or both.

5.a. For the second violation of one of the same aforementioned categories within a twenty four month period, provider will be assessed a civil fine of up to \$250 per day for violation of each of the aforementioned categories (if same category cited (twice) and fined for each day the provider was determined to be out of compliance with one of the aforementioned categories according to the following schedule of fines:

b. The base fine level for all violations shall be \$200 per day. From the base fine level, factor in any applicable upward or downward adjustments, even if the adjustment causes the total to exceed \$250. If the total fine

after all upward and downward adjustments exceeds \$250, reduce the fine for the violation to \$250 as prescribed by law.

i. If the violation resulted in death or serious physical or emotional harm to a child, or placed a child at risk of death or serious physical or emotional harm, increase the fine by \$50.

ii. If a critical violation for child/staff ratio is cited and provider was found to have three or more children above the required ratio, increase the fine by \$50.

iii. If a critical violation for child/staff ratio is cited for failure to have a minimum of two staff present, increase the fine by \$50.

iv. If the provider had a previous license revoked for the same critical violation cited, increase the fine by \$25.

v. If a critical violation for supervision was cited due to a child being left alone outdoors, increase the fine by \$25.

vi. If the age of the child cited in the child/staff ratio critical violation is four years of age or younger, increase the fine by \$25.

vii. If the age of the child cited in the supervision critical violation is four years of age or younger, increase the fine by \$25.

viii. If the critical violation was cited and occurred despite the objective good faith best efforts of licensee to comply, decrease the fine by \$25.

ix. If a critical violation was cited for the provider's incomplete documentation of the motor vehicle check, decrease the fine by \$25.

x. If the cited critical violation was for annual state central registry disclosure forms, decrease the fine by \$25.

xi. If the provider self-reported the incident which caused the critical violation to be cited, decrease the fine by \$25.

6. For the third violation of one of the same aforementioned categories within a 24 month period, the provider's license may be revoked.

7. The aggregate fines assessed for violations determined in any consecutive 12 month period shall not exceed \$2,000. If a critical violation in a different category is noted by DCFS that warrants a fine and the provider has already reached the maximum allowable fine amount that could be assessed by the department in any consecutive twelve month period as defined by the law and the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur within the 12 month period. The warning letter shall include a directed CAP which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response to the CAP within 14 calendar days of receipt of the letter. Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in revocation/non-renewal of license.

J. Departmental Reconsideration And Appeal Procedure For Fines

1. When a fine is imposed under these regulations, the Department shall notify the director or owner by letter that a fine has been assessed due to deficiencies cited at the facility and the right of departmental reconsideration. The notification may be sent by certified mail or hand delivered to the facility. If the director or owner is not present at the facility, delivery of the written reason(s) for such action may be made to any staff of the facility. Notice to a staff shall constitute notice to the facility of such action and the reasons therefore. The letter shall specify the dates and the violation cited for which the fine(s) shall be imposed. Fines are due within 30 calendar days from the date of receipt of the letter unless the provider request a reconsideration of the fine assessment. The provider may request reconsideration of the assessment by asking DCFS for such reconsideration in writing within 10 calendar days from the date of receipt of the letter. A request for reconsideration shall include a copy of the letter from the Licensing Section that notes the reasons for assessment of the fine together with the specific reasons the provider believes assessment of the fine to be unwarranted and shall be mailed to: Department of Children and Family Services, Licensing Section, P.O. Box 260035 Baton Rouge, LA 70826. If the provider withdraws the request for reconsideration, the fine is payable within seven calendar days of the withdrawal or on the original date that the fine was due, whichever is later.

2. The department shall advise the director or owner by letter of the decision of DCFS after reconsideration and the right to appeal. The notification may be sent by certified mail or hand delivered to the facility. If the director or owner is not present at the facility, delivery of the written decision may be made to any staff of the facility. Notice to a staff shall constitute notice to the facility of such action.

a. If DCFS finds that the Licensing Section’s assessment of the fine is justified, the provider shall have 15 calendar days from the receipt of the reconsideration letter to appeal the decision to the DAL. A request for appeal shall include a copy of the letter from the Licensing Section that notes the reasons for assessment of the fine and a copy of the reconsideration decision together with the specific areas of the decision the appellant believes to be erroneous and/or the specific reasons the decision is believed to have been reached in error, and shall be mailed to: Department of Children and Family Services, Appeals Section, P.O. Box 2944, Baton Rouge, LA 70821-9118.

b. The DCFS Appeals Section shall notify the DAL of receipt of an appeal request. Division of Administrative Law (DAL) shall conduct a hearing in accordance with the Administrative Procedure Act within 30 days of the receipt thereof, and shall render a decision not later than 60 days from the date of the hearing. The appellant will be notified by letter from DAL of the decision, either affirming or reversing the department’s decision.

c. If the provider has filed a timely appeal and the department’s assessment of fines is affirmed by an administrative law judge of the DAL, the fine shall be due within 30 calendar days after mailing notice of the final ruling of the administrative law judge or, if a rehearing is requested, within 30 calendar days after the rehearing decision is rendered. The provider shall have the right to

seek judicial review of any final ruling of the administrative law judge as provided in the Administrative Procedure Act. If the appeal is dismissed or withdrawn, the fines shall be due and payable within seven calendar days of the dismissal or withdrawal. If a judicial review is denied or dismissed, either in district court or by a court of appeal, the fines shall be due and payable within seven calendar days after the provider’s suspensive appeal rights have been exhausted.

3. If the provider does not appeal within 15 calendar days of receipt of the department’s reconsideration decision, the fine is due within 30 calendar days of receipt of the department’s reconsideration decision and shall be mailed to Department of Children and Family Services, Licensing Section, P.O. Box 260035 Baton Rouge, LA 70826. If the provider files a timely appeal, the fines shall be due and payable on the date set forth in §7355.J.2.c. If the provider withdraws the appeal, the fine is payable within seven calendar days of the withdrawal or on the original date that the fine was due, whichever is later.

4. If the provider does not pay the fine within the specified timeframe, the license shall be immediately revoked and the department shall pursue civil court action to collect the fines, together with all costs of bringing such action, including travel expenses and reasonable attorney fees. Interest shall begin to accrue at the current judicial rate on the day following the date on which the fines become due and payable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1635 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended LR 36:333 (February 2010), LR 36:849 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 39:66 (January 2013), amended LR 40:

§7357. Definitions

A. ...

Change of Ownership—a transfer of ownership of a currently licensed facility that is in operation and caring for children, to another entity without a break in service to the children currently enrolled.

Corporation—any entity incorporated in Louisiana or incorporated in another State, registered with the Secretary of State in Louisiana, and legally authorized to do business in Louisiana.

Individual owner—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university, or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through a judicial separation of property agreement or acquired via a judicial termination of the community of aqets and gains.

Juridical entity—corporation, partnership, limited-liability company, church, university, or governmental entity.

* * *

Natural person—a human being and, if that person is married and not judicially separated or divorced, the spouse of that person

Non-Vehicular Excursion—any activity that takes place outside of the licensed area (play yard and facility), that is within a safe, reasonable walking distance, and that does not require transportation in a motor vehicle. This does not include walking with children to and from schools.

Owner or Operator—The individual who exercises ownership or control over a child day care facility, whether such ownership/control is direct or indirect.

Ownership—The right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law.

a. *Direct Ownership*—when a natural person is the immediate owner of a child day care facility, i.e., exercising control personally rather than through a juridical entity.

b. *Indirect Ownership*—when the immediate owner is a juridical entity.

Partnership—includes any general or limited partnership licensed or authorized to do business in this state. The owners of a partnership are its limited or general partners and any managers thereof.

* * *

Water activity—a water-related activity in which children are in, on, near and accessible to, or immersed in, a body of water, including but not limited to a swimming pool, wading pool, water park, river, lake, beach, etc.

Water play activity—a water-related activity in which there is no standing water, including but not limited to fountains, sprinklers, water slip and slides, water tables, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended LR 36:334 (February 2010), LR 36:850 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:814 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 39:471 (March 2013), LR 40:

§7359. Procedures

A. - A.3. ...

4. Change Of Ownership (CHOW)

a. Any of the following constitutes a change of ownership:

- i. change in the federal tax id number;
- ii. change in the state tax id number;
- iii. change in profit status;
- iv. any transfer of the child care business from an individual or juridical entity to any other individual or juridical entity;
- v. termination of child care services by one owner and beginning of services by a different owner without a break in services to the children; and/or

vi. addition of an individual to the existing ownership on file with the Licensing Section.

b. Although the following does not constitute a change of ownership for licensing purposes, a change of information form is required. The change of information form shall be submitted to the Licensing Section within 14 calendar days of the change.

i. if individual ownership, upon death of the spouse and prior to execution of the estate;

ii. if individual ownership, upon death of the spouse and execution of the estate, if the surviving spouse remains as the only owner;

iii. if individual ownership, undergoing a separation or divorce until a judicial termination of the community aquets and gains, signed by both parties;

iv. changes in board members for churches, corporations, limited liability companies, universities, or governmental entities;

v. any removal of a person from the existing organizational structure under which the child day care facility is currently licensed.

c. A facility facing adverse action shall not be eligible for a CHOW. An application involving a center facing adverse action shall be treated as an initial application rather than a change of ownership.

d. When a facility changes ownership, the current license is not transferable. Prior to the ownership change and in order for a temporary license to be issued, the new owner shall submit a CHOW application packet containing the following:

i. a completed application and full licensure fee as listed in §7359.B.2 based on current licensed capacity or requested capacity, whichever is less;

ii. current (as noted in §7359.A.4.e) Office of State Fire Marshal approval;

iii. current (as noted in §7359.A.4.e) Office of Public Health approval;

iv. current (as noted in §7359.A.4.e) City Fire approval (if applicable);

v. a sketch or drawing of the premises including classrooms, buildings and enclosed play area;

vi. a list of staff to include staff's name and position;

vii. documentation of director qualifications as listed in §7369.A;

viii. signed and dated statement from current owner noting last day care will be provided at the facility;

ix. signed and dated statement from new owner noting first day care will be provided at the facility;

x. three dated and signed reference letters on the director attesting affirmatively to his/her character, qualifications, and suitability to care and supervise children;

xi. documentation of a fingerprint-based satisfactory criminal record clearance for all staff, including owners and operators. CBC shall be dated no earlier than 30 days before the application has been received by the Licensing Section (the prior owner's documentation of satisfactory criminal background checks is not transferrable); and

xii. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff including owners and

operators or a determination from the Risk Assessment Panel or Division of Administrative Law (DAL) noting that the individual does not pose a risk to children (the prior owner's documentation of state central registry disclosure forms is not transferrable).

e. The prior owner's current Office of State Fire Marshal, Office of Public Health, and City Fire approvals are only transferrable for 60 calendar days. The new owner shall obtain approvals dated after the effective date of the new license from these agencies within 60 calendar days. The new owner will be responsible for forwarding the approval or extension from these agencies to the Licensing Section.

f. A licensing inspection shall be conducted within 60 calendar days to verify that the provider is in compliance with the minimum standards. At this time, licensing staff shall complete a measurement of the facility and enclosed, outdoor play yard. Upon review of the space, the capacity of the facility may be reduced or increased as verified by new measurement of the facility.

g. All staff/children's information shall be updated under the new ownership prior to or on the first day care is provided by the new owner.

h. If all information in §7359.A.4.d is not received prior to or on the last day care is provided by the existing owner, the new owner shall not operate until a license is issued. The new owner is not authorized to provide child care services until the licensure process is completed in accordance with §7359.A.1-2.

A.5. - E.3. ...

4. When a child care provider has been cited during an on-site inspection for violation of a licensing standard which the department deems non-critical, the department shall allow the provider an opportunity to immediately remedy the non-critical area of non-compliance if allowing such immediate correction does not endanger the health, safety, or well-being of any child in care. The remedy shall be included in the documentation noted by the department. The department shall exercise its discretion in determining which areas of the licensing standards are deemed critical under the particular circumstances which caused the deficiency to be cited.

a. Licensing staff shall cite the non-critical deficiencies at the time of the inspection and shall note in the inspection findings whether the deficiency was corrected during the licensing inspection. If all non-critical deficiencies are verified as corrected during the inspection and no critical areas of non-compliance are cited, no follow up inspection is required. If non-critical deficiencies are not verified as corrected during the inspection, or if deficiencies in critical areas are cited, a follow-up inspection may be conducted to determine that corrections have been made and maintained in a manner consistent with the licensing standards.

b. The statement of deficiencies shall be placed on the internet for public viewing unless posting the information violates state or federal law or public policy, and the posted deficiency statements shall note which areas of non-compliance were verified as corrected at the time of the licensing inspection.

c. Areas of non-critical non-compliance may include but are not limited to posted items, paperwork,

children's records, documentation of training, furnishing/equipment, and emergency/evacuation procedures.

F. - J.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2771 (December 2007), amended LR 36:335 (February 2010), LR 36:833 (April 2010), repromulgated LR 36:1273 (June 2010), amended LR 36:1279 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section and Economic Stability and Self-Sufficiency Section, LR 36:2521 (November 2010), repromulgated LR 37:513 (February 2011), amended by the Department of Children and Family Services, Division of Programs, LR 37:814 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7361. General Requirements

A. - L. ...

M.1. The director shall report all critical incidents as specified below. For the following critical incidents, immediate notification shall be made to emergency personnel and/or law enforcement, as appropriate. In addition, the child's parent shall be contacted. Once contact or attempted contact has been made to child's parent, the director shall verbally notify Licensing Section Management staff immediately. The verbal report shall be followed by a written report within 24 hours:

- a. death of a child while in the care of the provider;
- b. illness or injury requiring hospitalization or professional medical attention of a child while in the care of the provider;
- c. any child leaving the facility and/or play yard unsupervised or with an unauthorized person;
- d. any child left unsupervised on the play yard;
- e. use of corporal punishment;
- f. suspected abuse and/or neglect by facility staff;
- g. any child given the wrong medication or an overdose of the correct medication;
- h. leaving any child in a vehicle unsupervised or unsupervised on a field trip;
- i. fire on the child care premises if children are present;
- j. any serious and unusual situation that affects the safety and/or well-being of a child or children in the care of the provider;
- k. any emergency situation that requires sheltering in place;
 - l. implementation of facility lock-down procedures, and/or temporarily relocating children;
 - m. any loss of power over two hours while children are in care;
 - n. an accident involving transportation of children in which children were injured; and/or
 - o. a physical altercation between adults in the presence of children on the child care premises.

2. Director shall ensure that appropriate steps have been taken to ensure the health and safety of the children in sheltering in place and/or lock down situations prior to

notifying parents and/or Licensing Section management staff.

3. Within 24 hours or the next business day, the director shall verbally notify Licensing Section management staff of the following reportable incidents. The verbal report shall be followed by a written report within 24 hours:

- a. fire on the child care premises if children not present;
- b. structural damage to the facility; and/or
- c. an accident involving transportation of children in which children were not injured.

4. The written report to DCFS Licensing Section for critical incidents and reportable incidents shall include the following information:

- a. name of facility;
- b. address of facility;
- c. license number;
- d. contact number;
- e. date of incident;
- f. time of incident;
- g. name of child or children involved;
- h. name of staff involved and other staff present;
- i. description of incident;
- j. date and time of notification to parents (to include attempted contacts), law enforcement, and Child Welfare (CW), if applicable;
- k. signature of person(s) notifying law enforcement, emergency personnel, CW, and parents;
- l. corrective action taken and/or needed to prevent reoccurrence;
- m. date and signature of staff completing report; and
- n. signature of parent, with date and time of signature.

5. The director shall contact or attempt to contact a child's parent immediately upon the occurrence of any critical incident as noted in §7361.M.1 or reportable incident as noted in §7361.M.3.c. If the parent cannot be contacted by phone the director shall notify the child's parent verbally at the time the child is picked up from the facility.

N. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 physical access to a child day care facility as defined in R.S. 46:1403.

O. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the licensing management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1638 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2773 (December 2007), amended LR 36:335 (February 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:814 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7363. Transportation

A. - C.1.h. ...

i. a visual inspection of the vehicle is conducted to verify that no child was left on the vehicle. A staff person shall physically walk through the vehicle and inspect all seat surfaces, under all seats, and in all enclosed spaces and recesses in the vehicle's interior. The staff conducting the visual check shall record the time of the visual check inspection and sign his or her full name, indicating that no child was left on the vehicle. For daily transportation services, the vehicle shall be inspected at the completion of each trip/route prior to the staff person exiting the vehicle.

1.j. - 10. ...

D.1.Field Trips. 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.

2. A visual inspection of the vehicle is required to ensure that no child was left on the vehicle. A staff person shall physically walk through the vehicle and inspect all seat surfaces, under all seats, and in all enclosed spaces and recesses in the vehicle's interior. The staff conducting the visual check shall record the time of the visual check inspection and sign his or her full name, indicating that no child was left on the vehicle. For field trips, whether facility provided or contracted, the vehicle shall be checked and a face-to-name count conducted prior to leaving facility for destination, when destination is reached, before departing destination for return to facility, and upon return to facility.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 26:1638 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2773 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1207 (May 2012), LR 40:

§7365. Center Staff

A. - C.3. ...

4. Criminal Records Check. All paid and unpaid staff persons, substitutes, and foster grandparents shall have documentation of a fingerprint based satisfactory criminal record check (CBC) from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being hired by or present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, shall be hired by or present in any capacity in any licensed child care facility. CBC shall be dated no earlier than 30 days of the individual's hire date at the facility. If a staff person leaves the employment of the provider for more than 30 calendar days, a new fingerprint based CBC is required prior to the individual being rehired by or present on the child care premises. A criminal background check is satisfactory for purposes of this section if it shows no arrests for any enumerated offense or, if an arrest is shown on the background check, the background check or certified documentation from the jurisdiction of arrest affirmatively shows that the charges were disposed of without a conviction for any excludable offense. A plea of guilty or nolo contendere shall be deemed a conviction.

a. If an individual applicant has previously obtained a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police such certified copy shall be acceptable as meeting the CBC requirements for employees and/or staff. If an individual provides a certified copy of their criminal background check which he/she has previously obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. An original certified copy or a photocopy of the certified copy shall be kept on file at the facility in which the individual is currently employed/providing child care services. However, prior to the one year expiration of the certified criminal background check, a new fingerprint based satisfactory criminal background check shall be obtained from Louisiana State Police in order for the individual to continue employment/providing child care services at the center. If the clearance is not obtained prior to the one year expiration of the certified criminal background check, the individual is no longer allowed on the child care premises until a clearance is received.

5. Criminal Records Check – Independent Contractors. All independent contractors including therapeutic professionals and extracurricular personnel, e.g. contracted transportation drivers, computer instructors, dance instructors, librarians, tumble bus personnel, speech therapists, licensed health care professionals, state-certified teachers employed through a local school board, Louisiana Department of Education (LDE) staff, local school district staff, art instructors, and other outside contractors shall have documentation of a fingerprint based satisfactory criminal record check (CBC) from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility or providing services for the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, shall be present in any capacity in any licensed child care facility. CBC shall be dated prior to the individual being present on the child care premises. A criminal background check is satisfactory for purposes of this section if it shows no arrests for any enumerated offense or, if an arrest is shown on the background check, the background check or certified documentation from the jurisdiction of arrest affirmatively shows that the charges were disposed of without a conviction for any excludable offense. A plea of guilty or nolo contendere shall be deemed a conviction.

a. If an individual has previously obtained a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police such certified copy shall be acceptable as meeting the CBC requirements for independent contractors. If an individual provides a certified copy of their criminal background check which he/she has previously obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. An original certified copy or a photocopy of the certified copy shall be kept on file at the facility in which the individual is currently providing child

care services. However, prior to the one year expiration of the certified criminal background check, a new fingerprint based satisfactory criminal background check shall be obtained from Louisiana State Police in order for the individual to continue providing child care services at the center. If the clearance is not obtained prior to the one year expiration of the certified criminal background check, the individual is no longer allowed on the child care premises until a clearance is received.

b. For the first school year that a LDE staff person or local school district staff person provides services to a child at a child care facility, that LDE staff person or local school district staff person shall provide documentation of a fingerprint based satisfactory criminal record check as required by §7365.C.4 or shall provide the original, completed, signed, notarized, DCFS approved affidavit to the provider prior to being present and working with a child or children at the facility. A photocopy of the original affidavit shall be kept on file at the facility. This affidavit will be acceptable for the entire school year noted in the text of the affidavit and expires on May 31 of the current school year. For all subsequent school years following the first year, the LDE staff or local school district staff person shall present a new affidavit or an original, completed, and signed letter from the superintendent of the school district or designee or superintendent of LDE or designee. The provider will need to view the original letter presented by the LDE staff or local school district staff person and keep a photocopy of the original letter on file at the facility. This letter will be acceptable for the entire school year noted in the text of the letter and expires on May 31 of the current school year. The letter is acceptable only if the following conditions are met:

- i. the LDE staff person or local school district staff person has remained employed with the same school district as noted in the affidavit the provider has on file;
- ii. the provider has maintained a copy of the affidavit on file, and
- iii. the letter is presented on school district letterhead or LDE letterhead and signed by the superintendent of the school district or designee or superintendent of LDE or designee.

6. State Central Registry Disclosure. Documentation of a state central registry disclosure form (SCR 1) completed by the staff (paid and/or non paid) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the child care facility, shall be updated annually, at any time upon the request of DCFS, and within 24 hours or no later than the next business day, whichever is sooner, of any staff receiving notice of a justified (valid) finding of child abuse and/or neglect. Any current or prospective employee, or volunteer of a child care facility licensed by DCFS is prohibited from working in a child care facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse and/or neglect of a child, unless there is a finding by the Risk Evaluation panel or a ruling by the Division of Administrative Law (DAL) that the individual does not pose a risk to children.

a. The prospective paid and/or non paid staff (employee/volunteer) shall complete, sign, and date the state

central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

i. If a prospective staff (employee/volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment or volunteer duties at that time due to the state central registry disclosure. The director will provide the prospective employee/volunteer with the state central registry risk evaluation request form (SCR 2) so that a risk assessment evaluation may be requested.

ii. Individuals are eligible for employment/volunteer services if and when they provide written determination from the Risk Evaluation Panel or the DAL noting that they do not pose a risk to children

b. If a current staff receives notice of a justified (valid) finding of child abuse and/or neglect against them, he or she shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) finding as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the Licensing Section management staff within 24 hours or no later than the next business day, whichever is sooner, or upon being on the child care premises, whichever is sooner. Staff will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

i. If the staff person will no longer be employed at the center, the provider shall immediately submit a signed, dated statement noting the individual's name and termination date.

ii. Immediately upon receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment, the staff person with the justified (valid) finding, when in the presence of children shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for such supervision must have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect, or a determination from either the Risk Evaluation Panel or the DAL that the supervising employee does not pose a risk to children. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with a child or children. The provider shall submit a written statement to Licensing Section management staff acknowledging that the staff person with the justified finding will not be left alone and unsupervised with a child or children pending the disposition by the Risk Evaluation Panel or the DAL that the staff person does not pose a risk to children. When the aforementioned conditions are met, the staff (employee/volunteer) may be counted in child/staff ratio. A person supervised by an employee who does not have a satisfactory disclosure form on file as provided in this subsection shall be deemed to be alone and unsupervised.

(a). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual does not appeal the finding to DAL within the required timeframe, the staff (employee/volunteer) shall be terminated immediately.

(b). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the DAL within the required timeframe, the staff (employee/volunteer) shall continue to be under direct supervision while in the presence of children by another paid staff of the facility who has not disclosed that they have a justified (valid) finding on the state central registry until a ruling is made by the DAL that they do not pose a risk to children. Supervision shall not end until receipt of the ruling from the DAL that the employee does not pose a risk to children.

(c). If the DAL upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

iii. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the DAL ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation.

iv. Any information received or knowledge acquired that a current or prospective volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) finding of abuse and/or neglect shall be reported in writing to a Licensing Section management staff as soon as possible, but no later than the close of business on the next business day.

v. Any state central registry disclosure form, Risk Evaluation Panel finding, and DAL ruling that is maintained in a child care facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and/or neglect.

7. Health Requirements

a. All center staff shall be required to obtain three months before or within 30 days after beginning work and at least every three years thereafter a written statement from a physician certifying that the individual is in good health and is physically able to care for the children, and is free from infectious and contagious diseases.

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. The director or any center staff shall not remain at work if he/she has any sign of a contagious disease.

d. Substitute workers, temporary employees, or volunteers shall meet the same medical requirements as regularly employed personnel. Refer to substitute and temporary employees as defined.

8. Job Descriptions. A personnel job description shall be kept on file detailing employee's responsibilities.

9. Personnel Records. Personnel records shall be kept on file for a minimum of one year after the employee leaves. Health records may be returned to the staff member upon request.

D. - D.6....

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1639 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2774 (December 2007), amended by the Department of Children and Family Services, Division of Programs, LR 37:815 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:982 (April 2012), LR 40:

§7371. Required Child/Staff Ratios

A. Staff to Child Ratios

Class B	
Ages of Children	Child/Staff Ratio
Children under 12 months	6:1
One year old	8:1
Two year old	12:1
Three year old	14:1
Four year old	16:1
Five year old	20:1
Six year old and up	25:1

1. Mixed Ages. When the center serves children of mixed ages, excluding children under two years, an average of the staff ratio may be applied.

2. Staff Involved in Ratio. Only those staff members directly involved in child care and supervision shall be considered in assessing child/staff ratio.

3. When the number of children in the center exceeds 10, there must be an individual immediately available in case of an emergency.

4. At naptime, appropriate staffing shall be present within the center to satisfy required child/staff ratio.

B. The DCFS form noting required child/staff ratios shall be posted in each room included in the facility's licensed capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1641 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2775 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7372. Supervision

A. Children shall be supervised at all times in the facility, on the playground, on field trips, and on non vehicular excursions, including all water activities and water play activities.

1. Children shall not be left alone in any room, (excluding the restroom as noted in §7372.B) outdoors, or in vehicles, even momentarily, without a staff present.

2. A staff person shall be assigned to supervise specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff shall be able to state how many children are in their care at all times.

B. Children who are developmentally able may be permitted to go to the restroom on the child care premises independently, provided that:

1. staff member's proximity to children assures immediate intervention to safeguard a child from harm while in the restroom;

2. individuals who are not staff members may not enter the facility restroom area while in use by any child other than their own child;

3. a child five years of age and younger shall be supervised by staff members who are able to hear the child while in the restroom; and

4. a child six years of age and older may be permitted to go and return from the restroom without staff; however, staff must know the whereabouts of the child at all times.

C. When children are outside on the play yard, the staff member shall be able to summon another adult staff without leaving the group unsupervised.

D. Staff shall actively supervise children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

E. Children ages two years and above may be grouped together at rest time with one staff in each room supervising the resting children. If two rooms share a common doorway, one staff may supervise the resting children. If the view of the staff supervising the children is obstructed by an object such as a low shelving unit, children shall be checked by sight by staff continually circulating among the resting children.

F. Areas used by the children shall be lighted in such a way as to allow visual supervision at all times.

G. While on duty with a group of children, staff shall devote their entire time to supervising the children, meeting the needs of the children, and participating with them in their activities. Staff duties that include cooking, housekeeping, and/or administrative functions shall not interfere with the supervision of children.

H. Individuals who do not serve a purpose related to the care of children or who hinder supervision of the children shall not be present in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1430 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

§7385. Supervision

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1644 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2779 (December 2007), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 40:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? There will be no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule offers clarification to the current Rule in areas which help to ensure that the individuals that own, operate, or govern child care facilities and those that

are responsible for the education and supervision of children in child care facilities, have satisfactory criminal background clearances and are not listed on the State Central Registry.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and the family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as defined by R.S. 49:973.

Small Business Impact Statement

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Public Comments

All interested persons may submit written comments through November 26, 2013, to Lisa Andry, Deputy Assistant Secretary, Department of Children and Family Services, P. O. Box 94065, Baton Rouge, LA, 70804-9065.

Public Hearing

A public hearing on the proposed Rule will be held on November 26, 2013 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For Assistance, call (225) 342-4120 (Voice and TDD).

Suzy Sonnier
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Licensing Class "B" Regulations for Child Care Centers

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

This Rule proposes to amend LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter B, Sections 7355, 7357, 7359, 7361, 7363, 7365, 7371, 7372 and 7385 in accordance with R.S. 46:1430 and R.S. 46:1409.B (10). The proposed rule allows the Department of Children and Family Services (DCFS), in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for certain violations. These civil fines will exceed \$250 per day for each

assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2000. The proposed rule will also provide for a process of appeal, clarifies specific areas for which a fine may be assessed, and include procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

The only cost associated with this proposed rule is the cost of publishing rulemaking which is estimated to be approximately \$6,888 (Federal) in Fiscal Year 2013-2014. This is a one-time cost that is routinely included in the department's budget.

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

A provision of R.S.46:1430 establishes a Child Care Licensing Trust Fund. Monies generated from the civil fines shall be credited to this fund and appropriated for the education and training of employees, staff, or other personnel of child care facilities. DCFS cannot determine the number of child care facilities and child-placing agencies that will be assessed civil fines.

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

Failure by a provider to meet published, established standards with regard to child/staff ratio, supervision, criminal background clearances, state central registry disclosure, and/or critical incident reporting may result in a fee of not more than \$250 dollars per day being assessed, not to exceed \$2000 in a 12 month period.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition or employment.

Brent Villemarette
Deputy Secretary
1310#090

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Children and Family Services Economic Stability Section

Child Care Quality Rating System (LAC 67:III.5124)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (A), the Department of Children and Family Services (DCFS) proposes to adopt LAC 67:III, Subpart 12, Child Care Assistance Program, Chapter 51, Child Care Assistance Program, Subchapter C, Child Care Quality Rating System, Section 5124, Child Care Quality Rating System Administration. Adoption is pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF) in 45 CFR 98.11.

Section 5124 Child Care Quality Rating System Administration is being adopted to define the governmental agency contracted to administer the Child Care Quality Rating System.

The department considers these amendments necessary to adopt Rules governing administration of the Child Care Quality Rating System.

Title 67
SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency
Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program
Subchapter C. Child Care Quality Rating System
§5124. Child Care Quality Rating System

Administration

A. The Department of Children and Family Services shall enter into contract with the Louisiana Department of Education to administer the Child Care Quality Rating System which will assess, improve, and communicate the level of quality in early care and education settings.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 40:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will have no impact on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no negative effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will have no effect on family earnings or the family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are department functions.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Impact Statement

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Public Comments

All interested persons may submit written comments through November 25, 2013, to Lisa Andry, Deputy Assistant Secretary of Programs, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA, 70821-9065.

Public Hearing

A public hearing on the proposed Rule will be held on November 25, 2013, at the Department of Children and Family Services, Iberville Building, 627 North Forth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special

services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Suzy Sonnier
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Child Care Quality Rating System

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

This rule proposes to adopt rules governing administration of the Child Care Quality Rating System. The proposed rule stipulates that the secretary of the Department of Children and Family Services (DCFS) has authority to adopt Section 5124 Child Care Quality Rating System Administration to define the governmental agency contracted to administer the Child Care Quality Rating System.

As a result of Act 3, DCFS shall enter into contract with the Louisiana Department of Education to administer the Child Care Quality Rating System that will assess, improve, and communicate the level of quality (star rating system) in early care and education settings. The proposed change will not affect the net expenditures of the State, as existing resources in DCFS will be utilized to cover the program expenditures in DOE.

The cost associated with this proposed rule is the cost of publishing rulemaking. It is anticipated that \$492 (Federal) will be expended in SFY 13-14 for promulgation of this proposed rule and the final rule.

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

Implementation of this proposed rule will have no effect on revenue collections of State or local governmental units.

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

Services received by children and families in early care and education settings will remain the same. This proposed rule simply adopts the Louisiana Department of Education to administer the rating system.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will not have an impact on competition and employment for low-income families.

Brent Villemarette
Deputy Secretary
1310#088

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development
Office of Business Development

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

Under the authority of R.S. 47:6015 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development proposes to amend LAC 13:I.2901

et seq., relative to the administration of the research and development tax credit program.

The purpose of this regulation is to explain the procedure employed for the administration of the research and development tax credit program under R.S. 47:6015 as enacted by Act 257 of the 2013 Regular Session of the Legislature. The proposed regulation discusses definitions for the terms professional services firms and custom manufacturing and custom fabricating, discusses what documentation is required for submission to LED for credits, and LED examination criteria.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 29. Research and Development Tax Credit

§2901. Purpose and Application

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

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

1. encourage the development, growth, and expansion of the private sector within the state; and
2. encourage new and continuing efforts to conduct research and development activities within this state.

C. This Chapter shall apply to any person claiming a credit under this program.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010), amended by the Office of the Secretary, LR 38:350 (February 2012), amended by the Office of Business Development, LR 40:

§2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2353 unless the context clearly requires otherwise.

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

Affiliate—a company that shares more than 50 percent common ownership or other means of control with respect to another company.

Base Amount—70 percent of the average annual qualified research expenditures within Louisiana during the three preceding taxable years.

Business Component—any product, process, computer software, technique, formula, or invention which is to be held for sale, lease, license, or used in a trade or business of the taxpayer.

Credit Certification—a certification by DED of the amount of the research and development tax credit earned by a person for a particular tax year.

Custom Fabricator or *Custom Manufacturer*—companies that assemble, fabricate, or manufacture parts, equipment, assemblies, vessels, software or other products (“specified item”) in response to specific design criteria and delivery schedule provided by the customer/client.

a. The typical business model acquisition process utilized by custom fabricators and/or manufacturers is as follows:

i. the customer/client providing the custom fabricator and/or manufacturer with the detail specific design criteria for the specified item in a document generally referred to as a “request for proposal;”

ii. after review and analysis, the custom fabricator and/or manufacturer submits a “proposal” to the customer/client in which they commit to a specific price and delivery schedule to assemble, fabricate, or manufacture the specified item requested by the customer/client in their request for proposal;

iii. if the proposal is acceptable, the customer/client will generally issue a “purchase order” commitment document to the custom fabricator and/or manufacturer agreeing to the terms of their proposal, and authorizing the custom fabricator or manufacturer to begin work per their proposal; and

iv. although the custom fabricator or manufacturer generally commits to a fixed price to produce the requested item, they have effectively negated most, if not all, material or unusual commercial transaction risks by their ability to analyze the required design criteria before committing to a specific price and delivery schedule within their proposal.

LED—Louisiana Department of Economic Development.

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

Personal Services Firm—a firm who is primarily engaged in work which requires specialized education, knowledge, labor, judgment, is predominantly mental or intellectual in nature and which may require the holding of a professional license. These types of firms engage in activities which include, but are not limited to, architecture, engineering, legal services and accounting.

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

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

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

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

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

e. 26 U.S.C. §41 also excludes expenditures associated with certain activities from the definition of qualified research. These activities include:

i. research conducted after the beginning of commercial production;

ii. activities related to the adaptation of an existing business component to a particular customer’s requirements or needs;

iii. activities related to the reproduction, in whole or in part, of an existing business component from a physical examination of the business component, plans, blueprints, detailed specifications or publicly available information with respect to such component;

iv. activities related to management functions or techniques, efficiency surveys, market research, testing or development, routine data collection or routine testing or inspections for quality controls;

v. research conducted using the social sciences including economics and business management, as well as behavioral sciences, arts and humanities; and

vi. research funded by a contract, grant, or otherwise by another person or governmental entity.

Research and Development Tax Credits—credits against Louisiana income or corporation franchise taxes that are earned by a person pursuant to the provisions of the Research and Development Tax Credit Program.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:

§2904. Type, Amount and Duration of Credit

A. Type. Any taxpayer meeting the following criteria shall be allowed a refundable tax credit to be applied against income and corporation franchise taxes due:

1. employs 50 or more persons (including affiliates) and claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities;

2. employs less than 50 persons (including affiliates), and incurs qualified research expenses for the taxable year, as defined in 26 U.S.C. §41(b); and

3. receives a small business innovation research grant, as defined in R.S. 47:6015(D).

B. Amount. The amount of the credit authorized shall be equal to:

1. 8 percent of the difference between the Louisiana qualified research expenses for the taxable year minus the base amount, if the applicant is an entity that employs 100 or more persons (including affiliates); or

2. 20 percent of the difference, between the Louisiana qualified research expenses for the taxable year minus the base amount, if the applicant is an entity that employs 50 to 99 persons (including affiliates); or

3. 40 percent of the state's apportioned share of the taxpayer's qualified research expenses conducted in the state if the applicant is an entity that employs fewer than 50 persons (including affiliates); or

4. 40 percent of the small business innovation research grant award received during the tax year.

C. Duration. No credit shall be allowed for research expenditures incurred or small business innovation research grant funds received after December 31, 2019.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:1768 (August 2010), amended by Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:

§2905. Certification of Amount of Credit

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

B. The application for a credit certification shall be submitted on a form provided by the LED and shall include, but not be limited to the following information:

1. an application fee of \$250, payable to Louisiana Department of Economic Development;

2. appropriate supporting documentation:

a. for taxpayers employing 50 or more residents, a federal income tax return and evidence of the amount of federal research credit for the same taxable year;

b. for taxpayers employing up to 50 residents:

i. either:

(a). a federal income tax return and evidence of the amount of federal research credit for the same taxable year; or

(b). a report by a certified public accountant ("CPA") authorized to practice In Louisiana which comports with the agreed-upon accounting procedures established by LED; and

ii. evidence of the amount of qualified research expenses for the same taxable year;

c. for taxpayers claiming credits based upon the federal small business innovation research grant, evidence of the amount of such grant;

d. the LED may also require documentation, including but not limited to the following, as proof of an expenditure prior to certification:

i. wages:

(a). copy of W-2 for each employee who participates in qualifying research and development activities;

(b). percentage of each employee's salary that is dedicated to qualifying research and development activities; and

(c). Louisiana Workforce Commission quarterly report of wages paid for the company for the third and fourth quarter of the tax year in question;

ii. supplies:

(a). invoices with date of purchase included;

iii. contracted research:

(a). invoices with applicable dates or periods of work; and

(b). contracts for the research to be performed;

e. in order for any research and development project to qualify, the requesting company must identify:

i. the business component that was developed or improved;

ii. the uncertainty that existed in the capability, method or design related to such business component;

iii. how the research was technological in nature; and

iv. the process of experimentation undertaken;

3. the total amount of qualified research expenses and the qualified research expenses in this state;

4. the total number of Louisiana residents employed by the taxpayer and the number of those Louisiana residents directly engaged in research and development;

5. the average wages of the Louisiana resident employees not directly engaged in research and development and the average wages of the Louisiana resident employees directly engaged in research and development;

6. the average value of benefits received by all Louisiana resident employees;

7. the cost of health insurance coverage offered to all Louisiana resident employees;

8. any other information required by LED.

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

D. In order for credits to be awarded, a taxpayer must claim the expenditures within one year after December 31 of the year in which the expenditure was incurred. For example, company A buys a piece of equipment that would qualify for the research and development tax credit on May 15, 2011. In order for company A to receive a credit on that expenditure, the application for credit on that expense must be received by December 31, 2012.

E. Each year LED shall perform a detailed examination of at least 10 percent of all applications received prior to the issuance of credits on such applications.

1. LED shall select applications for examination based on one or more of the following:

- a. a random sampling;
- b. applicant's business sector; and
- c. other selection criteria as determined by LED.

2. Upon notice that their application has been selected for examination, the applicant shall provide all supporting documentation requested by LED to show the amount of qualified expenses for such taxable year.

3. The applicant bears the burden of proving that its activities meet the definition of qualified research under 26 U.S.C. § 41(d).

4. LED still retains the right to examine a taxpayer's application after the issuance of credits and any credits disallowed following such examination shall be subject to recovery, recapture or offset.

F. If LED reviews a submission and determines that an applicant is not eligible for tax credits for a tax year, the company shall have six months from the date of disallowance to resubmit additional documentation for reconsideration. LED will not consider any additional documentation after this six month period.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010), LR 40:

§2911. Recapture of Credits

A. An application for credit certification shall constitute:

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004), amended by Office of the Secretary, LR 38:352 (February 2012), amended by the Office of Business Development, LR 40:

§2913. Ineligible Businesses

A. For tax years beginning on or after January 1, 2013, the following types of businesses will be ineligible to participate in the program, unless specifically invited by the secretary of LED to:

1. professional services firms that do not have a pending or issued United States patent related to the qualified research expenditures claimed; and

2. businesses primarily engaged in custom manufacturing and custom fabricating that do not have a pending or issued United States patent related to the qualified research expenditures claimed.

B. Only expenditures directly related to the business component for which a professional services firm or business primarily engaged in custom manufacturing or custom fabricating has a pending or issued patent will be eligible for research and development credits.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 39: (October 2013), amended by the Office of Business Development, LR 40:

§2915 Agreed Upon Accounting Procedures

A. The CPA shall attest under the agreed-upon accounting procedures that the company's activities for each new or improved business component are those that would qualify for research and development credits under the *Internal Revenue Code*.

B. The CPA, CPA firm or an affiliate of the CPA or CPA firm shall not attest to the research and development agreed-upon accounting procedures if:

1. the CPA, CPA firm or affiliate of the CPA or CPA firm performed any other services outside the agreed-upon-procedures related to the underlying application for the same tax year. These activities would include all attest and non-attestation services including, but not limited to identification and quantification analysis, quantified benefits projection, application preparation, etc; or

2. the CPA, CPA firm or an affiliate of the CPA or CPA firm has any financial interest in the issuance of credits on a company's application.

C. The agreed upon-accounting procedures shall be available to the public as follows:

1. posted on www.louisianaeconomicdevelopment.com;

2. available for viewing during regular business hours at LED offices; and

3. available upon written request from the program administrator.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 39: (October 2013), amended by the Office of Business Development, LR 40:

Family Impact Statement

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

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by fax to (225) 342-9448, or by email to danielle.clapinski@la.gov. All comments must be received no later than 10 a.m., on November 25, 2013.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on November 25, 2013 at 10 a.m. at the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

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

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

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules. The Department of Economic Development intends to administer the program with existing personnel within its current budget. Administrative duties are expected to be diminished as applicants with fewer than 50 employees and not recipients of federal R&D credits may instead submit documentation certified by an eligible CPA, as outlined in the proposed rule. LED will routinely audit at least 10% of applications prior to credit issuance with permission to audit additionally before and after credit issuance as deemed necessary. A six month timeline is established for document submission.

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

Act 257 of the 2013 legislative session provides for the codification of current practice as far as what entities are eligible to receive benefits. There is no anticipated direct material effect on state or local governmental revenues as a result of this measure. Expediting the application process for small businesses that do not claim the federal R&D credit may serve to speed the rate at which R&D credits are issued, but should not change the amount of credits issued. Certain businesses are explicitly disallowed from credit eligibility as defined in this proposed rule, including custom fabricators/manufacturers related to parts, equipment, assemblies, vessels, software or other products according to stated design and delivery criteria as specified in the proposed rule. Personal services firms, such as architectural, engineering, legal services, accounting and others, are also explicitly disallowed. However, if these businesses have a patent pending/issued or an invitation of the Secretary of LED, participation in the credit may be allowed.

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

Expediting the application process for small businesses that do not claim the federal R&D credit may serve to speed the rate at which R&D credits are issued, though is not expected to fundamentally change the amount of credits issued. Small business applicants not participating in the federal credit will face a different documentary requirement, and applicants bear the burden of proving that its activities meet the federal definition of qualified research. All applicants will be subject to a six month timeframe for submission of requested documentation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Anne G. Villa
Undersecretary
1310#028

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301 and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its scholarship/grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking amends the definition of *tuition* to provide that during the 2013-2014 academic year, tuition shall be the tuition amount published by the postsecondary institution. It further provides that beginning with the 2014-2015 academic year, tuition shall be the tuition amount as of August 1, 2013, published by the postsecondary institution plus any increase in tuition authorized by the legislature. This rulemaking also provides a requirement that the institution list the TOPS award amount on a student's fee bill, whether paper or on-line, and that the TOPS award amount must be the same as the institution's tuition amount listed on the fee bill.

Title 28 EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions §301. Definitions

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

Tuition—

a. through the fall semester or term and winter quarter of the 2010-2011 award year, the fee charged each

student by a post-secondary institution to cover the student's share of the cost of instruction, including all other mandatory enrollment fees charged to all students except for the technology fee authorized by Act 1450 of the 1997 Regular Session of the Legislature:

i. which were in effect as of January 1, 1998;
ii. any changes in the cost of instruction authorized by the legislature and implemented by the institution after that date; and

iii. for programs with alternative scheduling formats that are approved in writing by the Board of Regents after that date. Any payment for enrollment in one of these programs shall count towards the student's maximum eligibility for his award:

(a). up to the equivalent of eight full-time semesters of postsecondary education in full-time semesters for the TOPS Opportunity, Performance and Honors Award; or

(b). up to the equivalent of two years of postsecondary education in full-time semesters and summer sessions for the TOPS Tech Award.

b. beginning with the spring semester, quarter or term of the 2010-2011 award year and through the spring semester, quarter, or term of the 2012-2013 award year;

i. the tuition and mandatory fees authorized in Subparagraph a above; or

ii. the tuition fee amount published by the postsecondary institution, whichever is greater.

c. Beginning with the fall semester, quarter, or term of the 2013-2014 award year, the tuition amount as of August 1, 2013, published by the postsecondary institution for the 2013-2014 award year for paying students;

d. beginning with the fall semester, quarter, or term of the 2014-2015 award year, the tuition amount as of August 1, 2013, published by the postsecondary institution for the 2013-2014 award year for paying students, plus any increase authorized by the legislature which is not attributable to any fees. No fees or increases attributable to fees of any kind shall be included in the TOPS award amount. Stipends for TOPS Performance and Honors awards shall not be included in the TOPS award amount.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1489 (August 2009), LR 35:1490 (August

2009), LR 36:311 (February 2010), LR 36:490 (March 2010), LR 36:2854 (December 2010), LR 37:1561 (June 2011), LR 37:1562 (June 2011), LR 38:1953 (August 2012), LR 38:3156 (December 2012), LR 39:308 (February 2013), LR 40:

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1903. Responsibilities of Post-Secondary Institutions

A.1. - B.3. ...

4. annually, all institutions are required to provide LASFAC a current fee schedule. The schedule must include an itemized description of the composition of the mandatory fees listed on the fee schedule, including the tuition amount, as those fees will appear on a student's fee bill;

5. - 10.c. ...

11.a. Beginning with the spring semester of 2014, for a public college or university to be permitted to bill for a TOPS award amount under the provisions of Section 1903.B.6 of these rules, the college or university must include on the student fee bill line items entitled:

i. "Tuition Only" that equals the TOPS award amount listed on the fee bill;

ii. "TOPS Award Amount" as defined in Section 301; and

iii. "TOPS Stipends" for TOPS Honors and Performance Award stipends. These amounts shall not be included in the "Tuition Only" or "TOPS Award Amount" line items.

b. There shall be no reference to a tuition amount on a student's fee bill other than as provided herein.

C. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:1233 (July 2009), LR 35:1490 (August 2009), LR 35:1491 (August 2009), LR 36:2857 (December 2010), LR 40:

Family Impact Statement

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

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in LSA-R.S. 49:973. (SG14150NI)

Small Business Statement

The proposed rule will have no adverse impact on small businesses as described in LSA-R.S. 49:965.2 *et seq.*

Public Comments

Interested persons may submit written comments on the proposed changes (SG14150NI) until 4:30 p.m., November 11, 2013, to Sujuan Williams Boutté, Ed. D., Interim Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

RULE TITLE: Scholarship/Grant Programs

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

Under current rules the Louisiana Office of Student Financial Assistance (LOSFA) sets the annual Taylor Opportunity Program for Students (TOPS) award amounts equal to the greater of an amount calculated by LOSFA or the institution's published tuition amount. For the 2013-2014 Academic Year, the institutions published tuition amounts are all greater than amounts calculated by LOSFA and will be greater in future years unless institutions decrease tuition amounts. It is highly unlikely that institutions will decrease tuition amounts in the future. The proposed rule eliminates LOSFA's process for calculation of TOPS Award amounts and bases all award amounts on published tuition amounts. The proposed change also requires public post-secondary institutions to post on a student's fee bill the "Tuition Only" amount charged the student, the "TOPS Award Amount" (which must equal the "Tuition Only" amount) and "TOPS Stipends". The school will incur a cost to modify the student fee bill, but the cost should be within the school's cost of doing business since they modify each fee bill to provide information relative to the term billed.

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

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

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

The proposed change will aid students and parents in understanding college costs by clearly showing that the TOPS Award Amount equals the "Tuition Only" costs of the school, thus complying with the requirements of R.S. 17:3048.1.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected by the proposed change.

George Badge Eldredge
General Counsel
1310#008

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Regulatory Permit for Stationary Internal
Combustion Engines (LAC 33:III.311)(AQ342)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.311 (AQ342).

This Rule revision will expand the existing Regulatory Permit for Emergency Engines (LAC3:III.311) to address non-emergency stationary internal combustion engines. R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S.30:2054(B)(9)(b) are satisfied. Pursuant to

R.S.30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S.30:2019-Promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S.49:950 et.seq.). The basis and rationale for this Rule are to expand the existing Regulatory Permit for Emergency Engines (LAC 33:III.311) to address non-emergency stationary internal combustion engines. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 3. Regulatory Permits

**§311. Regulatory Permit for Stationary Internal
Combustion Engines**

A. Applicability

1. This regulatory permit authorizes the installation and use of stationary internal combustion engines, including, but not limited to, electrical power generators, firewater pumps, and air compressors, subject to the requirements established herein, upon notification by the administrative authority that the application (i.e., notification form) submitted in accordance with Subsection L of this Section has been determined to be complete. This regulatory permit also authorizes the associated fuel storage tank provided the capacity of the tank is less than 10,000 gallons.

2. This regulatory permit may be used to authorize the use of both permanent and temporary engines.

3. This regulatory permit does not apply to:

a. ...

b. *nonroad engines*, as defined in LAC 33:III.502.A.

4. This regulatory permit shall not be used to authorize use of an engine that combusts noncommercial fuels, including used crankcase oil or any other used oil, facility byproducts, or any other type of waste material.

5. This regulatory permit shall not be used to authorize use of an engine that, when considering potential emissions from the engine and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

B. ...

C. Opacity

1. Limitations

a. Smoke. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes. This Subparagraph shall not apply to engines described in LAC 33:III.1107.B.1 and 2.

b. - c. ...

2. Monitoring and Recordkeeping for Emergency Engines

a. - d. ...

3. Monitoring and Recordkeeping for Nonemergency Engines

a. The permittee shall inspect each engine's stack for visible emissions no less than once each calendar week.

b. If visible emissions are detected using Method 22 of 40 CFR 60, Appendix A, the permittee shall conduct a 6-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, within three calendar days.

c. If the shade or appearance of the emission is darker than 20 percent average opacity (per Method 9), the permittee shall take corrective action to return the engine to its proper operating condition, and the 6-minute opacity reading shall be repeated in accordance with Method 9. The permittee shall notify the Office of Environmental Compliance no later than 30 calendar days after any Method 9 reading in excess of 20 percent average opacity or, for *Part 70 sources*, as defined in LAC 33:III.502.A, in accordance with Part 70 General Condition R of LAC 33:III.535.A. This notification shall include the date the visual check was performed, results of the Method 9 testing, and a record of the corrective action employed.

d. Records of visible emissions checks shall be kept on-site and available for inspection by the Office of Environmental Compliance. These records shall include:

- i. the engine's ID number;
 - ii. the engine's serial number;
 - iii. the date the visual check was performed;
 - iv. a record of emissions, if visible emissions were detected;
 - v. the results of any Method 9 testing conducted;
- and
- vi. a record of any corrective action employed.

D. - D.2. ...

E. Operating Time of Emergency Engines

1. - 3. ...

F. Emission Standards

1. New Source Performance Standards

a. Each stationary compression ignition (CI) internal combustion engine (ICE) described in 40 CFR 60.4200(a) shall comply with the applicable provisions of 40 CFR 60, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, unless the engine is exempted as described in 40 CFR 60.4200(d) or meets the conditions set forth in 40 CFR 60.4200(e).

b. Each stationary spark ignition (SI) ICE described in 40 CFR 60.4230(a) shall comply with the applicable provisions of 40 CFR 60, Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, unless the engine is exempted as described in 40 CFR 60.4230(e) or meets the conditions set forth in 40 CFR 60.4230(f).

2. National Emissions Standards for Hazardous Air Pollutants. Each stationary reciprocating ICE described in 40 CFR 63.6590 shall comply with the applicable provisions of 40 CFR 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, unless the engine is exempted as described in 40 CFR 63.6585(e) or identified in 40 CFR 63.6585(f).

3. Engines that are affected point sources as defined in LAC 33:III.2201.B shall comply with the applicable provisions of LAC 33:III.Chapter 22 – Control of Emissions of Nitrogen Oxides (NOX), including:

a. the appropriate NOX emission factor set forth in Table D-1A or Table D-1B of LAC 33:III.2201.D;

b. the initial and continuous demonstrations of compliance required by LAC 33:III.2201.G and H; and

c. the notification, recordkeeping, and reporting requirements of LAC 33:III.2201.I.

G. Performance Testing and Monitoring. The following performance testing and monitoring requirements shall apply to nonemergency engines with a manufacturer's horsepower rating of 500 or above and represented to operate more than 720 hours in any 6-month period on the application submitted in accordance with Subsection L of this Section.

1. No later than 180 days after the engine commences operation, the permittee shall conduct a performance test to determine NOX and CO emissions using Methods 7E (Determination of Nitrogen Oxides Emissions from Stationary Sources) and 10 (Determination of Carbon Monoxide Emissions from Stationary Sources) of 40 CFR 60, Appendix A. Each test run shall be conducted within 80 percent of the engine's maximum rated capacity or within 10 percent of the maximum achievable load. Alternate stack test methods may be used only with the prior approval of the Office of Environmental Services.

a. The permittee shall notify the Office of Environmental Services at least 30 days prior to the performance test in order to provide the department with the opportunity to conduct a pretest meeting and/or observe the test.

b. The permittee shall submit the performance test results to the Office of Environmental Services no later than 60 days after completion of the test.

2. The permittee shall monitor NOX, CO, and oxygen (O₂) concentrations in the engine's stack gas semiannually (6 months after the performance test or previous semiannual test, plus or minus 30 days) using a portable analyzer calibrated before each test using a known reference sample. NOX, CO, and O₂ concentrations may be monitored annually (12 months after the performance test or previous annual test, plus or minus 30 days) if the engine is equipped with catalytic controls.

3. Where monitoring of NOX or CO is required by 40 CFR 60, Subpart IIII; 40 CFR 60, Subpart JJJJ; 40 CFR 63, Subpart ZZZZ; or LAC 33:III.2201, the performance testing and monitoring requirements of this Subsection shall not apply for that pollutant.

H. Temporary Engines

1. Records of each temporary engine brought on-site shall be maintained and made available for inspection by the Office of Environmental Compliance. These records shall include:

- a. the date the unit was delivered;
- b. the make and model;
- c. the manufacturer's rated horsepower;
- d. the fuel type; and
- e. the date the unit was removed from the site.

2. The authorization for the use of any engine identified as being temporary shall remain effective for 12 months following the date on which the administrative authority determines that the application submitted in accordance with Subsection L of this Section is complete. If the permittee determines that an engine originally identified as temporary will remain on-site longer than 12 months, a

new application (i.e., notification form) shall be submitted in accordance with Subsection L of this Section prior to expiration of the authorization to operate under this regulatory permit as provided in this Paragraph.

I. Permanent Engines. Permanent engines authorized by this regulatory permit shall be included in the next renewal or modification of the facility's existing permit.

J. Gasoline storage tanks associated with an engine and with a nominal capacity of more than 250 gallons shall be equipped with a submerged fill pipe.

K. Emissions Inventory. Each facility subject to LAC 33:III.919 shall include emissions from all engines, including temporary units, authorized by this regulatory permit in its annual emissions inventory.

L. Notification Requirements. Written notification describing the planned activity shall be submitted to the Office of Environmental Services using the appropriate form provided by the department. A separate notification shall be submitted for each engine.

M. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit is \$713. In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$143. Applicable surcharges as described in LAC 33:III.211.A shall also be assessed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:459 (March 2009), amended LR 37:3221 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Family Impact Statement

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

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ342. Such comments must be received no later than December 2, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov.

Public Hearing

A public hearing will be held on November 25, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ342.

These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulatory Permit for Stationary Internal Combustion Engines

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

The proposed rule change will have no impact on state or local government expenditures. The proposed rule change will expand the current regulation (Regulatory Permit for Emergency Engines) to cover stationary internal combustion engines (ICEs), which will include emergency ICEs and nonemergency ICEs. The expanded regulatory permit will simplify the permit application process for owners or operators needing to install and operate nonemergency ICEs at a facility or location that requires an air permit.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to submit "any fee authorized by this Subtitle and applicable regulations to the secretary... in lieu of submission of a permit application." This fee is equivalent to, and in place of, that which would have been required had a permit or permit modification been applied for pursuant to LAC 33:III.501.

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

There will be no costs to directly affected persons or non-governmental groups as a result of the proposed rule change. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to "submit a written notification ... in lieu of submission of a permit application." However, this notification form will be specifically tailored to the source addressed by the regulatory permit (i.e., nonemergency stationary internal combustion engines) and used in place of the traditional, more generic permit application documents.

Use of a notification form specifically tailored to nonemergency stationary internal combustion engines should facilitate the department's review of such documents. Thus, a

final decision on proposed projects should be reached more expeditiously, possibly resulting in economic benefits to applicants.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment in the public or private sector as a result of this proposed rule change.

Herman Robinson
Executive Counsel
1310#044

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Solid Waste Financial Document Update
(LAC 33:VII.301, 407, 513, 517, 519, 527, 709,
717, 719, 1303, 1399, and 10313)(SW055)

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 Solid Waste regulations, LAC 33:VII.1399, Appendices C, D, I and J (SW055).

This Rule revises and updates the financial documents that cover financial assurance for liability, closure and post-closure at solid waste facilities in Louisiana. The requirements for financial assurance for liability, closure and post-closure at solid waste facilities were changed in a previous rulemaking. Certain appendices containing financial documents used to implement the financial assurance requirements need to be updated to match the previous changes. The basis and rationale of this rule are to allow the department to implement revised requirements for financial assurance for liability, closure and post-closure at solid waste facilities. The revised requirements will help ensure that funds are available for closure of solid waste facilities and for post-closure groundwater monitoring at those facilities. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§303. Wastes Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations

A. The following solid wastes, when processed or disposed of in facilities that are operated in an environmentally sound manner are not subject to the permitting requirements or processing or disposal standards of these regulations:

1. - 7. ...

8. agricultural wastes, including manures, that are removed from the site of generation by an individual for his

own personal beneficial use on land owned or controlled by the individual. The amount of wastes covered by this exemption shall not exceed 10 tons per year (wet-weight) per individual per use location. To qualify for this exemption, records documenting the amount of wastes used for beneficial use on land owned or controlled by the generator shall be maintained. These records shall be kept for a minimum period of two years;

9. - 13. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1027 (June 2007), LR 33:2140 (October 2007), LR 37:3235 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Chapter 4. Administration, Classifications, and Inspection Procedures for Solid Waste Management Systems

§407. Inspection Types and Procedures

A. - C.3. ...

4. Within 15 working days after a new, existing, or modified facility has undergone an initial start-up inspection, or within 30 days of receipt of the construction certification, the administrative authority shall issue a notice of deficiency or an approval of the construction and/or upgrade, unless a longer time period is set by mutual agreement.

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2517 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1032 (June 2007), LR 33:2142 (October 2007), LR 37:3235 (November 2011), repromulgated LR 37:3508 (December 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Chapter 5. Solid Waste Management System

Subchapter B. Permit Administration

§513. Permit Process for Existing Facilities and for Proposed Facilities

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

b. Permit holders who have been issued an initial final permit prior to November 20, 2011, and have not been issued an order to commence prior to November 20, 2011, shall provide written confirmation from the appropriate municipal or parish governing authority where the facility will be located, dated within 180 days prior to receiving an order to commence, indicating that the facility is or will be in compliance with all existing local zoning and land use restrictions.

A.3. - B.2. ...

3. The prospective applicant shall file an emergency response plan, as defined in LAC 33:VII.115.A, with the Louisiana state fire marshal as a special structures plan, prior to submittal of a new or renewal application for a solid waste permit. The content of the plan shall be in accord with

applicable sections of LAC 33:VII.Chapter 7. A copy of the plan shall also be sent to the Office of Environmental Services. Except as provided for in LAC 33:VII.513.B.4 or 5, no application for a permit to process or dispose of solid waste shall be filed with nor accepted by the administrative authority until the plan is approved by the Louisiana state fire marshal. The prospective applicant shall forward a copy of the approval to the Office of Environmental Services. The approved emergency response plan shall be considered applicable to subsequent permit applications submitted by the same applicant, unless a revised plan is filed with the Louisiana state fire marshal.

4. Any emergency response plan approved by the fire marshal before June 20, 2011, must be revised and submitted to the Louisiana fire marshal as a special structures plan, prior to submittal of a permit application or permit renewal application for a solid waste permit. The content of the revised plan shall be in accord with applicable sections of LAC 33:VII.Chapter 7. A copy of the revised plan shall also be sent to the Office of Environmental Services. Except as provided for in LAC 33:VII.513.B.4 or 5, after June 20, 2011, no application for a permit to process or dispose of solid waste shall be filed with nor accepted by the administrative authority unless the plan has been approved by the Louisiana state fire marshal subsequent to June 20, 2011. The prospective applicant shall forward a copy of the approval to the Office of Environmental Services. Any revised emergency response plan approved after June 20, 2011, shall be considered applicable to subsequent permit applications submitted by the same applicant, unless a revised plan is filed with the Louisiana state fire marshal.

5. The requirements of Paragraph B.3 of this Section shall not apply if the prospective applicant can demonstrate that he has the ability to meet the emergency response requirements listed below. The prospective applicant shall provide this demonstration to the Office of Environmental Services and the Louisiana state fire marshal, at least 30 days prior to submittal of a new or renewal solid waste application.

a. Requirements for Demonstration

i. The prospective applicant shall describe arrangements (including contracts, where applicable) for providing his own emergency response services.

ii. The minimum qualification for firefighters/emergency responders shall be that of operations level responder from the National Fire Protection Association, Standard 472, or other appropriate requirement from an applicable National Fire Protection Association standard. At least one person trained to this level shall respond in any incident requiring activation of emergency response services.

iii. The demonstration shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment.

6. The requirements of Paragraph B.3 of this Section shall not apply to permit modification requests, or to applications for permits (initial or renewal), deemed technically complete prior to June 20, 2011, except as directed by the administrative authority.

7. Pre-Application Public Notice

a. Prospective applicants shall publish a notice of intent to submit an application for a permit. This notice shall be published within 45 days prior to submission of the application to the Office of Environmental Services. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state and a major local newspaper of general circulation in the area where the facility is located. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state shall be the only public notice required.

b. The public notice shall be published in accordance with the form provided in LAC 33:VII.3001.Appendix A.

8. Post-Application Public Notice

a. All applicants shall publish a notice of application submittal within 45 days after submitting the application to the Office of Environmental Services. This public notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state and a major local newspaper of general circulation in the area where the facility is located. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state shall be the only public notice required.

b. The public notice shall be published in accordance with the form provided in LAC 33:VII.3003.Appendix B.

9. All prospective applicants are encouraged to meet with representatives of the Waste Permits Division prior to the preparation of a solid waste permit application to inform the department of the plans for the facility.

10. Applicants who are Type I only and who also do not propose to accept waste from off-site, other than off-site waste from affiliated persons, such as the applicant or any person controlling, controlled by, or under common control with, the applicant, are exempt from the requirements of LAC 33:VII.513.A.2.b and Paragraphs 1-2 of this Subsection.

11. Applicants for renewal or major modification of an existing permit are exempt from the requirements of Paragraphs 1-2 of this Subsection, provided that the application does not include changes that would constitute a physical expansion of the area(s) in which solid wastes are disposed beyond the facility's existing boundaries as set forth in the facility's existing permit.

12. Applicants for closure permits, applicants seeking authorization under a general permit, and minor modification requests are exempt from Paragraphs 1-5 of this Subsection.

13. Applicants whose types are I-A only or II-A only, or both I and I-A or both I-A and II-A are exempt from the requirements of Paragraphs 1 and 2 of this Subsection.

C.- G.5. ...

6. A copy of the draft permit decision shall be sent to the parish governing authority where the facility is located.

7. Closure permits based on closure plans or applications, if not received as part of a permit application for a standard permit, shall not follow the draft permit

decision process. Once a closure plan or application is deemed adequate, the administrative authority shall issue a closure permit.

H. - K. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1037 (June 2007), LR 33:2143 (October 2007), LR 37:1563 (June 2011), LR 37:3238 (November 2011), repromulgated LR 37:3510 (December 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Subchapter C. Permit System for Facilities Classified for Upgrade or Closure

§517. Modifications of Permits and Other Authorizations to Operate

A. - B.1.i. ...

2. Once an application for a permit modification that requires public notice has been determined by the Office of Environmental Services to be technically complete, the department shall proceed as follows:

a. For applications determined to be technically complete prior to November 20, 2011, the application shall be accepted for public review and the applicant shall provide additional copies as directed by the administrative authority. The department shall prepare a draft permit decision following the procedures in LAC 33:VII.513.G.2-6.

b. For applications determined to be technically complete on or after November 20, 2011, the department shall prepare a draft permit decision following the procedures of LAC 33:VII.513.G.1-6.

B.3. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of Environmental Assessment, LR 30:2033 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2430, 2490 (October 2005), LR 33:1039 (June 2007), LR 33:2145 (October 2007), LR 37:3241 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Subchapter D. Permit Application

§519. Permit Application Form(s)

A. - B.1.l.ii. ...

m. the zoning of the facility that exists at the time of the submittal of the permit application. (Note the zone classification and zoning authority, and include documentation stating that the proposed use does not violate existing land-use requirements.);

B.1.n. - C. ...

D. Incomplete applications will not be accepted for review. The administrative authority shall notify the applicant when the application is determined to be incomplete. If the applicant elects to continue with the permit application process, the applicant shall follow the requirements provided in the notice. These requirements

may include submitting additional information in the form of an application addendum or submitting a new application.

E. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), LR 33:2145 (October 2007), LR 37:3242 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Subchapter E. Permit Requirements

§527. Construction Schedules

A. Final permits may allow or require the construction or upgrade of permitted units. If a permit allows or requires the construction or upgrading of a unit that is (or will be) directly involved in the processing or disposal of solid waste, the facility shall submit reports, on a schedule specified in the permit, describing the completed and current activities at the site from the beginning of the construction period until the construction certification required by LAC 33:VII.407.C is submitted to the Office of Environmental Services. The reports shall be submitted to the Office of Environmental Services and the appropriate DEQ Regional Office. These reports shall include, at a minimum, the following information:

1. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:3247 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Chapter 7. Solid Waste Standards

Subchapter A. Landfills, Surface Impoundments, Landfarms

§709. Standards Governing Type I and II Solid Waste Disposal Facilities

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

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 foot buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility (or 300 feet for a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of landfills that have been closed in accordance with these regulations and for existing facilities.

B.3.b. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1315 (October 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1045 (June 2007), LR 34:613 (April 2008), LR 35:925 (May 2009), LR 37:3248 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Subchapter B. Solid Waste Processors

§717. Standards Governing All Type I-A and Type II-A Solid Waste Processors

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

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 foot buffer zone between the facility and a church shall not apply to any processing facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted processing area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility (or 300 feet for a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of processing facilities that have been closed in accordance with these regulations and for existing facilities.

B.3.b. - I.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2526, 2610 (November 2000), repromulgated LR 27:704 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2494 (October 2005), LR 33:1061 (June 2007), LR 33:2148 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009), LR 37:1566 (June 2011), LR 37:3252 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Subchapter C. Minor Processing and Disposal Facilities

§719. Standards Governing All Type III Processing and Disposal Facilities

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

3. Buffer Zones

a. Buffer zones of not less than 50 feet shall be provided between the facility and the property line. Buffer zones of not less than 200 feet shall be provided between the

facility and the property line for any new facility. The requirement for a 200 foot buffer zone between the facility and the property line shall not apply to any facility existing on November 20, 2011, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 foot buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 50 feet from the facility (for facilities existing on November 20, 2011), less than 200 feet from the facility (for facilities constructed after November 20, 2011), or less than 300 feet from the facility (for facilities located less than 300 feet from a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of woodwaste/construction/demolition-debris landfills that have been closed in accordance with these regulations and for existing facilities. Notwithstanding this Paragraph, Type III air curtain destructors and composting facilities that receive putrescible, residential, or commercial waste shall meet the buffer zone requirements in LAC 33:VII.717.B.3. In addition, air curtain destructors shall maintain at least a 1,000-foot buffer from any dwelling other than a dwelling or structure located on the property on which the burning is conducted (unless the appropriate notarized affidavit waivers are obtained).

B.3.b. - E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1065 (June 2007), LR 33:2149 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009), LR 37:3252 (November 2011), repromulgated LR 37:3511 (December 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Chapter 13. Financial Assurance for All Processors and Disposers of Solid Waste

§1303. Financial Responsibility for Closure and Post-Closure Care

A. - A.5. ...

B. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond, a performance bond, a letter of credit, an insurance policy, or a financial test and/or corporate guarantee. The financial assurance mechanism is subject to the approval of the

administrative authority and must fulfill the following criteria.

1. - 5.d. ...

6. A financial assurance mechanism may be cancelled or terminated only if alternate financial assurance is substituted as specified in the appropriate Section or if the permit holder or applicant is no longer required to demonstrate financial assurance in accordance with these regulations.

C. - C.4. ...

5. The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subparagraph A.3.d of this Section.

C.6. - F.2. ...

3. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information:

- a. - c. ...
- d. facility name; and
- e. facility permit number.

F.4. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1090 (June 2007), amended LR 33:2154 (October 2007), LR 36:2555 (November 2010), LR 37:3254 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

§1399. Financial Documents—Appendices A, B, C, D, E, F, G, H, I, and J

- A. - B. Reserved.
- C. Repealed.
- D. Appendix D

SOLID WASTE FACILITY

TRUST AGREEMENT/STANDBY TRUST AGREEMENT

[Facility name, agency interest number, and permit number]

This Trust Agreement, the "Agreement," is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit of a solid waste processing or disposal facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term Grantor means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term Trustee means the Trustee who enters into this Agreement and any successor trustee.

(c). The term Secretary means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term Administrative Authority means the Secretary or his designee or the appropriate assistant secretary or his designee.

SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the site identification number, site name, facility name, facility permit number, and the annual aggregate amount of current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

SECTION 4. PAYMENT FOR CLOSURE AND/OR POST-CLOSURE CARE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines, which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution, uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall

assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee, by certified mail 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:VII.1399.Appendix D, on the date first written above.

WITNESSES: GRANTOR:
[Seal] By:
TRUSTEE:
By:
Its:
[Seal]

THUS DONE AND PASSED in my office in _____, on the _____ day of _____, 20 _____, in the presence of _____ and _____, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

Notary Public

[Example of Formal Certification of Acknowledgement]

STATE OF LOUISIANA
PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20____, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the _____ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their names as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:
NOTARY PUBLIC:

E. - H. ...

* * *

I. Appendix I

SOLID WASTE FACILITY
LETTER FROM THE CHIEF FINANCIAL OFFICER
(Closure and/or Post-Closure)

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,
Waste Permits Division
RE: [Facility name, agency interest number, and permit
number]
Dear Sir:

I am the chief financial officer of [name and address of firm, which may be the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "closure," and/or "post-closure," as applicable] as specified in LAC 33:VII.1303.

[Fill out the following three paragraphs regarding facilities and associated closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the facility name, site name, agency interest number, site identification number, and facility permit number.]

1. The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is guaranteed and demonstrated through a financial test similar to that specified in LAC 33:VII.1303 or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

2. This firm guarantees through a corporate guarantee similar to that specified in LAC 33:VII.1303, for [insert "closure care," "post-closure care," or "closure and post-closure care"] of the following facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

3. This firm is the permit holder or applicant of the following facilities, whether in Louisiana or not, for which financial assurance for closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:VII.1303. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

Closure and/or Post-Closure [Fill in Alternative I if the criteria of LAC 33:VII.1303.H.1.a are used.]	
Alternative I	
1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above)	\$
*2. Tangible net worth	\$

*3. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	\$		
	YES	NO	
4. Is line 2 at least \$10 million?			
5. Is line 2 at least 6 times line 1?			
*6. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 7.			
7. Is line 3 at least 6 times line 1?			

[Fill in Alternative II if the criteria of LAC 33:VII.1303.H.1.b are used.]			
Alternative II			
1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above)	\$		
*2. Tangible net worth	\$		
*3. Net worth	\$		
*4. Current liabilities	\$		
*5. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	\$		
	YES	NO	
6. Is line 4 divided by line 3 less than 1.5?			
7. Is line 2 at least \$10 million?			
*8. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 9.			
9. Is line 5 at least 6 times line 1?			

[Fill in Alternative III if the criteria of LAC 33:VII.1303.H.1.c are used.]			
Alternative III			
1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown above)	\$		
2. Current bond rating of most recent issuance of this firm and name of rating service			
3. Date of issuance of bond			
4. Date of maturity of bond			
*5. Tangible net worth (If any portion of the closure and/or post-closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line.)	\$		
*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.)	\$		
	YES	NO	
7. Is line 5 at least \$10 million?			
8. Is line 5 at least 6 times line 1?			
9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10.			
10. Is line 6 at least 6 times line 1?			

[Fill in Alternative IV if the criteria of LAC 33:VII.1303.H.1.d are used.]			
Alternative IV			
1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above)	\$		
*2. Tangible net worth	\$		
*3. Current liabilities	\$		
*4. The sum of net income plus depreciation, depletion, and amortization	\$		
5. Line 4 minus \$10 million	\$		
*6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	\$		
	YES	NO	
7. Is line 5 divided by line 3 greater than 0.10?			
8. Is line 2 at least \$10 million?			
*9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10.			
10. Is line 6 at least 6 times line 1?			

(The following is to be completed by all firms providing the financial test.)

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:VII.1399.Appendix I.

[Signature of Chief Financial Officer for the Firm]
[Typed Name of Chief Financial Officer]
[Title]
[Date]

J. Appendix J

SOLID WASTE FACILITY CORPORATE GUARANTEE FOR CLOSURE

AND/OR POST-CLOSURE CARE
[Facility name, agency interest number, and permit number]

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

Recitals

1. The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in LAC 33:VII.1303.H.9.

2. [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following facility covered by this guarantee: [List the facility name, site name, agency interest number, site identification number, and facility permit number. Indicate for each facility whether guarantee is for closure and/or post-closure, and the amount of annual aggregate closure and/or post-closure costs covered by the guarantee.]

[Fill in Paragraphs 3 and 4 below if the guarantee is for closure and/or post closure.]

3. Closure plans, as used below, refers to the plans maintained as required by LAC 33:Part.VII, for the closure and/or post-closure care of the facility identified in Paragraph 2 above.

4. For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:VII.1303.C, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post-closure estimates, as specified in LAC 33:VII.1303.

5. The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:VII.1301 " and/or "LAC 33:VII.1303"], as applicable, in the name of the [insert "permit holder" or "applicant"], within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [insert "permit holder" or "applicant"] has done so.

6. The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure and/or post-closure care he shall establish alternate financial assurance as specified in LAC 33:VII.1303, in the name of [insert "permit holder" or "applicant"], unless [insert "permit holder" or "applicant"] has done so.

8. The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post-closure insert "amendment or modification of the closure and/or post-closure care, the extension or reduction of the time of performance of closure and/or post-closure"] or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:Part.VII.

9. The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:VII.1301" and/or "LAC 33:VII.1303"] for the above-listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

10. The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:VII.1301" and/or "LAC 33:VII.1303"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].

11. The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:VII.1399.Appendix J, effective on the date first above written.

Effective date: _____

[Name of Guarantor]
[Authorized signature for guarantor]
[Typed name and title of person signing]
Thus sworn and signed before me this [date].

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1098 (June 2007), amended LR 37:3258 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Subpart 2. Recycling

Chapter 103. Recycling and Waste Reduction Rules

§10313. Standards Governing the Accumulation of Recyclable Materials

A. The speculative accumulation of recyclable materials is prohibited. Recyclable materials subject to the speculative accumulation prohibition are those materials that:

1. - 3. ...

B. A recyclable material is not speculatively accumulated, however, if:

1. the person or entity accumulating the material can demonstrate that the material is potentially recyclable, recoverable, and/or reclaimable and has a feasible means of being recycled, recovered, and/or reclaimed; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, recovered, and/or reclaimed on-site and/or sent off-site for recycling equals at least 50 percent by weight or volume of the amount of the material accumulated at the beginning of the period. In calculating the percentage of turnover, the 50 percent requirement shall be applied to only material of the same type and that is recycled and in the same manner;

2. the administrative authority approves storage of the recyclable material for a period in excess of one year, even though the requirements of Paragraph 1 of this Subsection are not met; or

3. the administrative authority otherwise exempts the recyclable material from the standards provided in this Section.

C. - C.1. ...

2. maintain records (e.g., manifests/trip tickets for disposal; bills of sale for materials) specifying the quantities of recyclable materials generated, accumulated and/or transported prior to use, reuse, or recycling; and

C.3. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:3260 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:

Family Impact Statement

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

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW055. Such comments must be received no later than December 2, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov.

Public Hearing

A public hearing will be held on November 25, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral

comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of SW055. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Solid Waste Financial Document Update

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 as a result of this proposed rule change. The proposed rule change corrects the appendices to Chapter 13 of the Solid Waste Regulations covering financial assurance for solid waste facilities to reflect the regulation changes promulgated in previous rule, SW053. A mechanism is being added to allow exemptions to the accumulation time regulations for recyclable materials. Also, this proposed rule includes technical corrections omitted from the last rule change.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule.

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

The proposed rule change will likely result in no impact to directly affected persons or non-governmental groups. Certain facilities that are only industrial or that are undergoing closure will be exempt from obtaining a solid waste capacity evaluation or a parish zoning confirmation by submitting a letter requesting the exemption. The rule corrects and completes regulations that have been promulgated in previous rulemaking (SW053).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment as a result of this proposed rule change.

Herman Robinson
Executive Counsel
1310#045

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Board of Home Inspectors

Education/Training, Continuing Education, Military Trained Applicants, and Special Investigative Entity (LAC 46:XL.119, 121, 122, 703, 705 and 707)

The Board of Home Inspectors proposes to amend LAC 46:XL.119, 121, 703, 705 and 707, and add section 122 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Louisiana Home Inspector Licensing Law, R.S. 37:1471 et seq. The text is being amended and adopted to revise the order of the requirements for pre-licensing education, to provide for military trained applicants in accordance with LSA R.S.9:3650, and to clarify the qualifications and procedure for special investigations.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XL. Home Inspectors

Chapter 1. General Rules

§119. Education/Training and Testing; Initial Licensure

A - E. ...

F. Prior to admission to an infield training program, the trainee shall complete the required 90 hours of course work described in §119.A.

G - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2741 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 35:1519 (August 2009), LR 36:2858 (December 2010), LR 38:2529 (October 2012), LR 40:

§121. Continuing Education; Instructors

A. - B.5. ...

6. The board may approve up to four hours of credit per licensing period for attending a quarterly or special board meeting or for serving on a committee appointed by the board and up to three hours of credit per appointment and six hours per licensing period for acting as an Special Investigating Entity as described in Sec 707.

B.7. - F.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1477, and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:2860 (December 2010), LR 37:2405 (August 2011), LR 38:2531 (October 2012), LR 40:

§122. Military Trained Applicants

A. Pursuant to R.S. 9 §3650 the LSBHI shall issue a license to a military-trained applicant to allow the applicant to lawfully practice home inspection in this state if, upon application to the board, the applicant satisfies all of the following conditions:

1. has completed a military program of training, been awarded a military occupational specialty, and performed in

that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure under these rules;

2. has been actively engaged in the practice of home inspection; and

3. has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice home inspection in this state at the time the act was committed.

B. Notwithstanding any other provision of law, the LSBHI shall issue a license to a military-trained applicant to allow the applicant to lawfully conduct home inspections in this state if, upon application to the board, the applicant holds a current license, certification, or registration from another jurisdiction and that jurisdiction's requirements for licensure are substantially equivalent to or exceed the requirements for licensure under these rules.

C. Notwithstanding any other provision of law, the Board shall issue a license to a military spouse to allow the military spouse to lawfully conduct home inspections in this state, if, upon application to the board, the military spouse satisfies all of the following conditions:

1. holds a current license from another state and that jurisdiction's requirements for licensure are substantially equivalent to or exceed the requirements for licensure in this state.

2. can demonstrate competency in the occupation through methods as determined by the board, such as having completed continuing education units or having had recent experience.

3. has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice home inspection in this state at the time the act was committed.

4. is in good standing and has not been disciplined by the agency that issued the license, certification, or permit in another jurisdiction.

D. In order to obtain a license to practice home inspection in this state, the applicant must make application to the board and provide official evidence that the applicant meets the qualifications set forth in Subsections A or B, above.

E. The board shall issue a temporary practice permit to a military-trained applicant or military spouse licensed in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under the provisions of this Section, if that jurisdiction has licensure standards substantially equivalent to the standards for licensure of the board in this state. The military-trained applicant or military spouse may practice under the temporary permit until a license is granted or until a notice to deny a license is issued in accordance with rules that shall be promulgated by the board.

F. In order to obtain a temporary practice permit, the applicant must make application to the board and provide:

1. a certified copy of the applicant's license issued by another jurisdiction;

2. evidence that the applicant is in good standing and has not been disciplined by the agency that issued the license in another jurisdiction;

3. evidence that the applicant has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to

practice home inspection in this state at the time the act was committed.

G. An individual possessing a temporary practice permit under the provisions of this Section shall receive priority processing of their application for license in accordance with these rules.

H. Nothing in this Section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure requirements established by the board.

I. The provisions of this Section shall not apply to any applicant receiving a dishonorable discharge or a military spouse whose spouse received a dishonorable discharge.

J. The provisions of this Section shall not apply to a license issued and regulated under the authority of the judicial branch of government.

AUTHORITY NOTE: Promulgated in accordance with Act 276 of the 2012 Legislative Session, R.S. 37:3650 and R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Home Inspectors, LR 40:

Chapter 7. Disciplinary Actions

§703. Complaints

A. - C. ...

D. The complaint shall refer to specific violations of these rules or of the Home Inspector Licensing Law. If the complaint involves violations of the standards of practice that the licensee did not observe or report, a list of those items must be submitted with the complaint along with the corresponding violation of the standards of practice. A copy of any documentation supporting the allegations shall be filed with the complaint, if available, including but not limited to, photographs, the pre-inspection agreement, the inspection report, and any reports made by any other consultant.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1483, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 40:

§705. Special Investigating Entity

A. For all complaints filed pursuant to §703.A, the board shall appoint a committee, employee, or other qualified licensee to verify whether the allegations listed in the complaint may indicate violations of these rules, the standards of practice, code of ethics or the Home Inspector Licensing Law. This committee, employee or licensee shall be referred to as the "Special Investigating Entity" or "SIE". The chairman may appoint an SIE at any time to commence review of a complaint. This appointment shall be ratified by the board in executive session at its next meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1694 (August 2004), LR 40:

§707. Investigations; Special Investigating Entity; Board Review

A. Upon receipt of a complaint filed pursuant to §703.A and conforming with this Chapter, the board shall assign a docket number to the complaint and refer it to an SIE. Any individual or member of a committee appointed to serve as an SIE shall:

1. have been a Louisiana licensed home inspector for at least three years prior to the appointment;
2. be current on all continuing education, fees and other requirements for licensure;
3. have no pending complaints against him; and
4. have performed over 300 home inspections pursuant to this Chapter.

B...

C. The SIE shall make an investigation of the charges and responses, with the sole purpose of determining whether or not the allegations listed in the complaint indicate a violation of these Rules or the Home Inspector Licensing Law. The SIE shall not visit or inspect the property at issue during the investigative process, but may contact the parties involved, and any third parties, to request any further information or documentation needed to conduct the investigation. The SIE may review photographs, reports, correspondence and other documentation submitted by any party or third party in conducting the investigation. The SIE shall prepare a report of its findings within 30 days of the completion of the investigation, and file the report with the board.

D. A copy of the report of the SIE shall be mailed by the COO to the complainant and to the respondent by certified mail. The report shall contain:

1. the docket number;
2. the names of the parties involved;
3. a list of the documents reviewed in connection with the investigation; and
4. a list of the persons contacted in connection with the investigation and the manner in which that contact was made (e.g. telephone, email, mail, etc..).

E. The report shall state whether each specific allegation of the complaint has or lacks sufficient evidence to meet the threshold for a hearing before the board.

F. If the report states that any or all allegations of the complaint lack sufficient evidence to indicate a violation of these rules or the licensing law, the chief operating officer shall advise the complainant and respondent in writing that the evidence was insufficient to support a particular or all allegations in the complaint. The chief operating officer shall also advise the complainant and respondent that, in order for the lacking allegations of the complaint to be reviewed by the board, the complainant must make a written request for review by the board within 15 days of mailing of the report, must support the complaint with additional documentation and must set forth specific reasons why the SIE's determination on each allegation is incorrect.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1694 (August 2004), LR 36:2863 (December 2010), LR 40:

Family Impact Statement

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

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Public Comments

Interested parties may submit written comments to Morgan Dampier, Chief Operating Officer, Louisiana State Board of Home Inspectors, 4664 Jamestown, Baton Rouge, LA, 70898-4868 or by facsimile to (225) 248-1335. Comments will be accepted through the close of business November 11, 2013.

Public Hearing

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on November 27, 2011 at 10 a.m. at the office of the State Board of Home Inspectors, 4664 Jamestown, Suite 220, Baton Rouge, LA.

Albert J. Nicaud
Board Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Education/Training, Continuing Education, Military Trained Applicants, and Special Investigative Entity

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

The proposed rule change will not result in any implementation costs (or savings) to state or local governmental units other than those one-time costs directly associated with the publication of this rule.

The proposed rule change amends the procedures for special investigative entities (SIE) in order to clarify the role of the SIE and provide structure and consistency with investigations. The proposed rule change also revises the requirements for pre-licensing education. In addition, the military trained personnel rule will allow those with military training in the home inspection field to bypass training and education requirements in order to speed up their path to licensure.

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

The proposed rule change will have no effect on revenue collections of state or local governmental units.

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

The proposed rule change provides for a substantial economic benefit to military trained personnel since they will not be required to pay for pre-licensing education or training (approximately \$3,000).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change could impact competition among trainees seeking licensure, since military trained persons will not have to bear the expense of pre-licensing education or training, while members of the general public would have to bear these costs to obtain a license.

Albert Nicaud
Attorney
1103#033

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Board of Pardons

Board of Pardons—Mission Statement (LAC 22:V.101)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons hereby gives notice of its intent to amend its rules of LAC 22:V.101. This proposed Rule change repeals the board's mission statement. As the mission statement of the board is not in response to enactment of legislation and is not a rule or regulation, but rather provides focus and structure for the strategic plan and development of the board. The mission statement will require periodic revision in response to evidence based research and trends in the criminal justice field. The Board of Pardons shares its vision and mission to stakeholders and the general public on its website at doc.la.gov.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part V. Board of Pardons

§101. Mission Statement

Repealed.

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 24:1132 (June 1998), amended LR 30:2842 (December 2004), amended by the Board of Pardons, LR 39:2252 (August 2013) repealed by the Board of Pardons, LR 39:

Family Impact Statement

Amendment to the rules has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed rule will have no impact on child, individual, or family poverty in relations to individual or community asset development as described in R.S. 49:973.

Public Comment

Written comments may be addressed to Linda Landry, Principal Assistant to the Board of Pardons and Parole, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on November 8, 2013.

Sheryl M. Ranatza
Chairman

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

RULE TITLE: Board of Pardons—Mission Statement

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

The proposed rule change will have no impact on state or local governmental unit expenditures. The proposed rule repeals the Board of Pardon's mission statement and instead, provides a link to the Board's vision and mission on its website at doc.la.gov.

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 the proposed rule change.

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

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Thomas C. Bickham, III
Undersecretary
1310#034

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Board of Pardons**

Parole—Mission Statement, Meetings and Hearings of the Committee on Parole, Parole Decisions, and Time Served (LAC 22:108, 511, 701, 705, 1115, and 1301)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons/Committee on Parole hereby gives notice of its intent to amend its rules of LAC 22:XI:108, 511, 701, 705, 1115 and 1301. These proposed rule changes include technical revisions; §511 provides for a parole hearing in absentia for offenders housed in a medical treatment facility; §701 simplifies the description of the validated risk assessment instrument considered in parole decision making; §705 establishes the procedure for requesting reconsideration of a parole decision; §1115 removes the requirement for monthly transmission of revocation dockets to Probation and Parole District Offices as this information is now available in a case management database.

Title 22

CORRECTIONS, CRIMINAL JUSTICE

AND LAW ENFORCEMENT

Part XI. Committee on Parole

Chapter 1. Administration

§108. Mission Statement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Board of Pardons/Parole Committee, LR 39:2259 (August 2013) repealed by the Board of Pardons/Committee on Parole, LR 39:

Chapter 5. Meetings and Hearings of the Committee on Parole

§511. Public Hearings/Videoconferencing

A. The vice-chairman shall schedule public hearings. A copy of the schedule shall be available for public inspection at the committee office.

B.1. The panel may consider the following actions with the offender present:

- a. parole;
- b. revocation; and
- c. recommendations for transitional work program.

2. The panel may consider the following actions without the offender present:

- a. to consider rehearing requests;
- b. cases where the offender is housed in a medical treatment facility or facility in other jurisdiction (such hearings conducted in absentia shall observe the same safeguards as hearings where the offender is present); and
- c. to consider those matters referred by a member from single-member action (see §513, "Single Member Action"); the member who makes such a referral may not serve on the panel.

C. Generally, public hearings shall be conducted via videoconferencing, with the committee members participating from the committee's headquarters in Baton Rouge, and offenders appearing before the committee via videoconferencing at the designated prison facility.

1. In the event a medical parole is being considered and the offender is unable to appear via videoconferencing, the committee shall travel to the prison facility at which the offender is housed to conduct the hearing (§511.B.2.a. if offender being considered for medical parole is housed in a medical treatment facility).

2. In the case of videoconferencing, the family, friends, and attorney of the offender shall be at the location of the offender.

3. In the case of videoconferencing, the victim(s) may be at the location of the committee or may participate by telephone through the local district attorney's victim advocacy representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq. and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), LR 39:

Chapter 7. Parole Decisions

§701. Policy Statement

A - C.7. ...

8. Risk Assessment

a. All Offenders. The committee will consider the risk assessment score provided by the Department of Public Safety and Corrections. The score is determined by a validated risk assessment instrument that has been validated for the Louisiana offender population. The assessment identifies potential risk and identifies programmatic needs of

offenders utilizing two sets of components, static and dynamic factors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2300 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2265 (August 2013), LR 39:

§705. Application for Parole Rehearing or Request for Reconsideration of Decision

A. Rehearing: An offender must apply in writing for a parole rehearing. The written request must contain the following information (at a minimum):

1. - C.3. ...

D. Reconsideration. An offender may request that the Committee reconsider its decision to deny parole as outlined herein. However, this process does not establish a formal appeal process as parole is an administrative discretionary decision that is not subject to appeal.

1. A parole panel may reconsider a decision of any parole panel at the request of the board chairman.

2. An offender whose parole is denied or rescinded, or whose parole supervision is revoked may request reconsideration by the committee.

a. The request for reconsideration shall be made in writing by the offender (or the offender's authorized legal representative) and shall be postmarked no later than twenty-one calendar days from the date of the hearing during which the parole panel action was taken.

b. If the request for reconsideration is not postmarked within 21 calendar days, it shall be denied.

c. Reconsideration review shall be at the discretion of the committee and shall not be available except for the following reasons:

i. if there is an allegation of misconduct by a committee member that is substantiated by the record;

ii. if there is a significant procedural error by a committee member; or

iii. if there is significant new evidence that was not available when the hearing was conducted. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

d. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error being alleged.

e. A written request for reconsideration postmarked within the time period set forth in §705.D.2.a. shall be screened by the chairman or designee to determine whether the request for reconsideration raises substantial grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c. may be present. The request for reconsideration shall be denied by the chairman or designee, if in his or her discretion, it is determined that the request does not raise adequate grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c. are present.

3. If the chairman or designee determines upon screening that a request for reconsideration raises adequate grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c are present.

a. The request for reconsideration shall be placed on the docket for the next available parole panel hearing.

b. If a majority of the parole panel members vote in favor of granting reconsideration, the case shall be set for a parole hearing at the next available parole panel hearing date.

4. If a majority of the parole panel votes to grant full reconsideration, the following procedures shall apply.

a. The case shall be set for review at the next available parole panel hearing date. The review shall be conducted from the record of the first hearing. The appearance of the offender shall not be necessary.

b. If a committee/panel member wishes to have additional testimony, an appearance hearing may be conducted.

c. The panel shall vote after reviewing the initial taped interview and the record.

d. A decision to change the result of the hearing that is the subject of the reconsideration review shall require a unanimous vote of the parole panel conducting the reconsideration review.

e. The panel's decision to change the result of the hearing under full reconsideration review or to let the result stand shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2267 (August 2013), LR 39:

Chapter 11. Violations of Parole

§1115. Decision of the Parole Panel

A - B.2. ...

C.1. At the conclusion of the hearing, the panel will advise the offender orally of its decision and he will be furnished with a copy of the parole revocation decision form.

2. A copy of each parole revocation decision form will also be forwarded to the Probation and Parole District Office assigned supervision of the offender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2274 (August 2013), LR 39:

Chapter 13. Time Served

§1301. Time Must Be Served if Revoked

A.1. - 2. ...

3. An parolee, offender who has been granted parole by the committee before August 15, 1997 for a crime committed on or after July 26, 1972, and who has been revoked for violating the terms of parole granted by the board committee, shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole, up to a maximum of 180 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., R.S. 15:540 et seq. and R.S. 15:571.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306

(December 1998), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2274 (August 2013), LR 39:

Family Impact Statement

Amendment to the rules has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relations to individual or community asset development as described in R.S. 49:973.

Public Comment

Written comments may be addressed to Linda Landry, Principal Assistant to the Board of Pardons and Parole, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on November 8, 2013.

Sheryl M. Ranatza
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Parole—Mission Statement, Meetings and Hearings of the Committee on Parole, Parole Decisions, and Time Served

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

The proposed rule change will have no impact on state or local governmental unit expenditures.

The proposed rule changes are technical revisions regarding the Committee on Parole and include the following: provides for a parole hearing in absentia for offenders housed in a medical treatment facility; simplifies the description of the validated risk assessment instrument considered in parole decision making; establishes the procedure for requesting reconsideration of a parole decision; removes the requirement for monthly transmission of revocation dockets to Probation and Parole District Offices as this information is now available in a case management database; and adds the Committee on Parole's mission statement.

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 the proposed rule change.

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

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Thomas C. Bickham, III
Undersecretary
1310#035

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Racing Commission

Corrupt and Prohibited Practices (LAC 35:I.1797)

The Louisiana State Racing Commission hereby gives notice that it intends to amend the following Rule. Currently Paragraph B.4 of the Rule provides that the stewards, who have authority at the racetrack, refer particular cases to the commission. On the following types of violations, the commission has consistently redistributed the purse. The proposed Rule amends the Rule to mandate that the stewards immediately redistribute the purse for the following: a) gross violations (severity level III) of section ARCI category IV/V; b) extraordinary violations (severity level II) of section ARCI category IV/V; and c) third violations of ARCI category IV/V at any severity level within a 12-month period.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1797. Penalty Guidelines

A. - B.4. ...

a. On ordinary violation(s) of classes IV or V within a 12-month period, the trainer shall be fined \$500 on the first violation; \$1,000 on the second violation; and on the third and subsequent violations the trainer shall be fined \$1000, the purse shall be redistributed and the case referred to the commission for further action.

b. On extraordinary violation(s) of classes IV or V in a manner that might affect the performance of a horse within a 12-month period, the trainer shall be fined \$1,000 and the purse shall be redistributed on the first offense. On the second and subsequent violations, the trainer shall be fined \$1000, the purse shall be redistributed and the case referred to the commission for further action.

c. On gross violation(s) of classes IV or V in a manner that intends to affect the performance of a horse, the trainer shall be fined not less than \$1,000, the purse shall be redistributed and the case referred to the commission for further action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 19:613 (May 1993), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:1014 (May 2002), LR 30:1017 (May 2004), LR 40:

Family Impact Statement

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

Poverty Statement

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

Public Comments

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive

director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule for a period up to 20 days, exclusive of weekends and state holidays, from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Corrupt and Prohibited Practices**

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

There are no anticipated costs or savings to state or local governmental units associated with the proposed Rule change, other than one-time costs directly associated with its publication. The proposed Rule provides that stewards redistribute the purse for the following: a) gross violations (severity level III) of Section ARCI Category IV/V; b) extraordinary violations (severity level II) of ARCI Category IV/V; and c) third violation of ARCI Category IV/V at any severity level within a 12-month period. This proposed Rule change merely codifies current practice.

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

The proposed Rule change will not result in any increase in revenue collections of state or local governmental units.

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

The proposed Rule change will not result in any estimated costs and/or economic benefit to directly affected persons or non-governmental groups

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Charles A. Gardiner III
Executive Director
1310#036

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

Coordinated Care Network
Prescription Drugs Prior Authorization Form
(LAC 50:I.3303 and 3503)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:I.3303 and §3503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which implemented a coordinated system of care in the Medicaid

Program designed to improve performance and health care outcomes through a healthcare delivery system called coordinated care networks, also known as the BAYOU HEALTH Program (*Louisiana Register*, Volume 37, Number 6).

Act 312 of the 2013 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to establish provisions requiring managed care organizations participating in coordinated care networks to use a standard form for the prior authorization of prescription drugs. In compliance with the directives of Act 312, the department now proposes to amend the provisions governing coordinated care networks in order to require participating managed care organizations (health plans) to utilize a standard form for the prior authorization of prescription drugs.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 33. Coordinated Care Network Shared Savings Model

§3303. Shared Savings Model Responsibilities

A. - T.3. ...

U. The department shall require all managed care organizations participating in coordinated care networks to utilize the standard form designated by the department for the prior authorization of prescription drugs, in addition to any other currently accepted facsimile and electronic prior authorization forms.

1. A CCN-S may submit the prior authorization form electronically if it has the capabilities to submit the form in this manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1578 (June 2011), amended LR 40:

Chapter 35. Coordinated Care Network Managed Care Organization Model

§3503. Managed Care Organization Model Responsibilities

A. - S.3. ...

T. The department shall require all managed care organizations participating in coordinated care networks to utilize the standard form designated by the department for the prior authorization of prescription drugs, in addition to any other currently accepted facsimile and electronic prior authorization forms.

1. A CCN-P may submit the prior authorization form electronically if it has the capabilities to submit the form in this manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1583 (June 2011), amended LR 40:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 27, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Coordinated Care Network Prescription Drugs Prior Authorization Form

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

It is anticipated that implementation of this proposed Rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 13-14. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 13-14. It is anticipated that \$164 will be collected in FY 13-14 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule amends the provisions governing coordinated care networks in order to require all managed care organizations to utilize a standard form for the prior authorization of prescription drugs. It is anticipated that implementation of this proposed Rule will not have economic costs or benefits to coordinated care networks for FY 13-14, FY 14-15, and FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

J. Ruth Kennedy
Director
1310#070

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice
Housing Stabilization and Transition Services
(LAC 50:XXI.11303 and 12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.11303 and §12101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Children's Choice Waiver to clarify the provisions of the waiver and to adopt provisions for a self-direction initiative which will allow participants and their families to receive coordination of Children's Choice services through a direct support professional rather than a licensed enrolled provider agency (*Louisiana Register*, Volume 39, Number 9).

The department now proposes to amend the provisions governing the Children's Choice Waiver in order to include housing stabilization transition services and housing stabilization services as covered services under the waiver program. These services will enable participants who are transitioning into a permanent supportive housing unit to secure and maintain their own housing in the community.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice

Chapter 113. Service

§11303. Service Definitions

A. - M.3.a. ...

N. Housing Stabilization Transition Services

1. Housing stabilization transition services enable participants who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the participant is in an institution and preparing to exit the institution using the waiver.

2. Housing stabilization transition services include the following components:

a. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

- i. access to housing;
- ii. meeting the terms of a lease;
- iii. eviction prevention;
- iv. budgeting for housing/living expenses;
- v. obtaining/accessing sources of income necessary for rent;

vi. home management;

vii. establishing credit; and

viii. understanding and meeting the obligations of tenancy as defined in the lease terms;

b. assisting the participant to view and secure housing as needed, which may include arranging for and providing transportation;

c. assisting the participant to secure supporting documents/records, completing/submitting applications, securing deposits, and locating furnishings;

d. developing an individualized housing support plan based upon the housing assessment that:

- i. includes short and long term measurable goals for each issue;
- ii. establishes the participant's approach to meeting the goal; and
- iii. identifies where other provider(s) or services may be required to meet the goal;

e. participating in the development of the plan of care and incorporating elements of the housing support plan; and

f. exploring alternatives to housing if permanent supportive housing is unavailable to support completion of the transition.

3. Housing stabilization transition services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. This service is only available to persons who are residing in a state of Louisiana permanent supportive housing unit, or who are linked for the state of Louisiana permanent supportive housing selection process.

4. Participants may not exceed 165 combined units of this service and housing stabilization services.

a. Exceptions to exceed the 165 unit limit may be made only with written approval from the Office for Citizens with Developmental Disabilities.

O. Housing Stabilization Services

1. Housing stabilization services enable waiver participants to maintain their own housing as set forth in the participant's approved plan of care. Services must be provided in the home or a community setting.

2. Housing stabilization services include the following components:

a. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

- i. access to housing;
- ii. meeting the terms of a lease;
- iii. eviction prevention;

iv. budgeting for housing/living expenses;

v. obtaining/accessing sources of income necessary for rent;

vi. home management;

vii. establishing credit; and

viii. understanding and meeting the obligations of tenancy as defined in the lease terms;

b. participating in the development of the plan of care and incorporating elements of the housing support plan;

c. developing an individualized housing stabilization service provider plan based upon the housing assessment that includes short and long term measurable goals for each issue, establishes the participant's approach to meeting the goal, and identifies where other provider(s) or services may be required to meet the goal;

d. providing supports and interventions according to the individualized housing support plan. If additional supports or services are identified as needed outside the scope of housing stabilization service, the needs must be communicated to the support coordinator;

e. providing ongoing communication with the landlord or property manager regarding the participant's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager;

f. updating the housing support plan annually or as needed due to changes in the participant's situation or status; and

g. providing supports to retain housing or locate and secure housing to continue community-based supports if the participant's housing is placed at risk (e.g., eviction, loss of roommate or income). This includes locating new housing, sources of income, etc.

3. Housing stabilization services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. This service is only available to persons who are residing in a state of Louisiana permanent supportive housing unit.

4. Participants may not exceed 165 combined units of this service and housing stabilization transition services.

a. Exceptions to exceed the 165 unit limit may be made only with written approval from the Office for Citizens with Developmental Disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 40:

Chapter 121. Reimbursement

§12101. Reimbursement Methodology

A. - B. ...

1. Family support, crisis support, center-based respite, applied behavioral analysis (ABA-based therapy), aquatic therapy, art therapy, music therapy, sensory integration, hippotherapy/therapeutic horseback riding, housing stabilization transition services, and housing stabilization

services shall be reimbursed at a flat rate per 15-minute unit of service, which covers both service provision and administrative costs.

B.2. - D.1.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 36:2280 (October 2010), LR 37:2157 (July 2011), LR 39:2504 (September 2013), LR 40:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will provide support for the unification of families in a home setting.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it is expected to ensure waiver participants have access to housing-related support services.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 27, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community-Based
Services Waivers—Children’s Choice
Housing Stabilization and Transition Services**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 13-14 since the Children’s Choice Waiver is a capped waiver. It is anticipated that \$738

(\$369 SGF and \$369 FED) will be expended in FY 13-14 for the state’s administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 13-14. It is anticipated that \$369 will be collected in FY 13-14 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule amends the provisions governing the Children’s Choice Waiver to include housing stabilization transition services and housing stabilization services as covered services under the waiver program. Waiver participants will have a greater array of services to choose from, but there will be no projected net fiscal impact to the state since the Children’s Choice Waiver is a capped waiver program. It is anticipated that implementation of this proposed Rule will not have economic costs or benefits to Children’s Choice Waiver providers for FY 13-14, FY 14-15, and FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on competition and employment.

J. Ruth Kennedy
Director
1310#071

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers
New Opportunities Waiver
Policy Clarifications and New Services
(LAC 50:XXI.Chapters 137-143)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.Chapters 137-143 and to adopt §§13931-13937 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the New Opportunities Waiver (NOW) to reduce the reimbursement rates as a result of a budgetary shortfall in state fiscal year 2013 (*Louisiana Register*, Volume 39, Number 4).

The department now proposes to amend the provisions governing the NOW in order to clarify the provisions of the waiver and to add the following new services to the waiver program: 1) housing stabilization transition; 2) housing stabilization; 3) remote assistance; and 4) adult companion care.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based
Services Waivers

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13701. Introduction

A. The New Opportunities Waiver (NOW), hereafter referred to as NOW, is designed to enhance the long-term services and supports available to individuals with developmental disabilities, who would otherwise require an intermediate care facility for persons with developmental disabilities (ICF-DD) level of care. The mission of NOW is to utilize the principle of self-determination and supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, NOW includes a self-direction service delivery option. This allows for greater flexibility in hiring, training, and general service delivery issues. NOW replaced the Mentally Retarded/Developmentally Disabled (MR/DD) waiver after participants of that waiver were transitioned into NOW.

B. All NOW services are accessed through the case management agency of the participant's choice. All services must be prior authorized and delivered in accordance with the approved plan of care (POC). The POC shall be developed using a person-centered process coordinated by the individual's case manager.

C. Providers must maintain adequate documentation to support service delivery and compliance with the approved plan of care and provide said documentation at the request of the department.

D. In order for the NOW provider to bill for services, the participant and the direct service provider, professional or other practitioner rendering service must be present at the time the service is rendered. The service must be documented in service notes describing the service rendered and progress towards the participant's personal outcomes and POC.

E. Only the following NOW services shall be provided for or billed for the same hours on the same day as any other NOW service:

1. substitute family care;
2. supported living; and
3. skilled nursing services. Skilled nursing services may be provided with:

- a. substitute family care;
- b. supported living;
- c. day habilitation;
- d. supported employment (all three modules); and/or
- e. employment-related training.

F. The average participant expenditures for all waiver services shall not exceed the average Medicaid expenditures for ICF-DD services.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1201 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR

33:1647 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13703. Participant Qualifications and Admissions
Criteria

A. In order to qualify for NOW, an individual must be three years of age or older, offered a waiver opportunity (slot) and meet all of the following criteria:

1. have a developmental disability as specified in R.S. 28:451.2;
2. be on the Developmental Disabilities (DD) Request for Services Registry (RFSR), unless otherwise specified through programmatic allocation in §13707;
3. ...
4. meet the requirements for an ICF-DD level of care which requires active treatment of a developmental disability under the supervision of a qualified developmental disability professional;
5. have assurance that health and welfare of the individual can be maintained in the community with the provision of NOW services;
6. have justification, as documentation in the approved plan of care, that NOW services are appropriate, cost effective and represent the least restrictive environment for the individual;
7. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1201 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13704. Resource Allocation Model

A. - A.3. ...

a. The participant or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the amount of assigned IFS service units. If the participant disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

4. Implementation of the resource allocation model was phased-in for the allocation of new waiver opportunities and renewal of existing waiver opportunities beginning July 1, 2009.

B. The following needs-based assessment instruments shall be utilized to determine the level of support needs of NOW participants:

B.1. - D.4.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing and the Office for Citizens with Developmental Disabilities, LR 36:65 (January 2010), amended LR 40:

§13705. Denial of Admission or Discharge Criteria

A. Individuals shall be denied admission to or discharged from the NOW if one of the following criteria is met:

1. the individual does not meet the financial eligibility requirements for the Medicaid Program;
2. the individual does not meet the requirement for an ICF-DD level of care;

3. the individual is incarcerated or placed under the jurisdiction of penal authorities, courts or state juvenile authorities;

4. the individual resides in another state or has a change of residence to another state;

5. the participant is admitted to an ICF-DD facility or nursing facility with the intent to stay and not to return to waiver services. The waiver participant may return to waiver services when documentation is received from the treating physician that the admission is temporary and shall not exceed 90 days. The participant will be discharged from the waiver on the ninety-first day if the participant is still in the ICF-DD or nursing facility;

6. the health and welfare of the participant cannot be assured through the provision of NOW services within the participant's approved plan of care;

7. the individual fails to cooperate in the eligibility determination/re-determination process and in the development or implementation of the approved POC; and/or

8. continuity of services is interrupted as a result of the individual not receiving a NOW service during a period of 30 or more consecutive days. This does not include interruptions in NOW services because of hospitalization, institutionalization (such as ICFs-DD or nursing facilities), or non-routine lapses in services where the family agrees to provide all needed or paid natural supports. There must be documentation from the treating physician that this interruption will not exceed 90 days. During this 90-day period, the Office for Citizens with Developmental Disabilities (OCDD) will not authorize payment for NOW services.

9. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1202 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities LR 40:

§13707. Programmatic Allocation of Waiver Opportunities

A. The Request for Services Registry, hereafter referred to as "the registry," shall be used to evaluate individuals for waiver eligibility and to fill all waiver opportunities for persons with developmental disabilities. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a case management agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for level of care determination. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next person on the registry shall be notified as stated above and the process continues until an eligible person is assigned the waiver opportunity. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a waiver opportunity, the person's name shall be removed from the registry.

B. Right of Refusal. A person may be designated inactive on the registry upon written request to OCDD. When the individual determines that he/she is ready to begin the waiver evaluation process, he/she shall request, in writing, that his/her name be removed from inactive status. His/her original protected request date will be reinstated. In addition, persons who left a publicly-operated facility after July 1, 1996 and who would have received a waiver opportunity, but chose another option at the time of discharge, may request access to a waiver opportunity through OCDD or its designated agent. OCDD will verify that the individual meets the criteria for this option and provide access to the next available waiver opportunity based on his/her date of discharge from the publicly-operated facility. That will become his/her protected date.

C. Utilizing these procedures, waiver opportunities shall be allocated to the targeted groups cited as follows.

1. A minimum of 90 waiver opportunities shall be available for allocation to foster children in the custody of the Department of Children and Family Services (DCFS), Child Welfare Division or its successor, who successfully complete the financial and medical certification eligibility processes and are certified for the waiver. DCFS Child Welfare or its successor is the guardian for children who have been placed in DCFS custody by court order. DCFS or its successor shall be responsible for assisting the individual in gathering the documents needed in the eligibility determination process, preparing the plan of care, and submitting the plan of care document to OCDD.

2. A minimum of 160 waiver opportunities shall be available for people living at Pinecrest Supports and Services Center (formerly known as Pinecrest Development Center), or its alternates at private ICFs-DD, who have chosen to receive community-based waiver services, have successfully completed the financial eligibility and medical certification processes, and are certified for the waiver. For the purposes of assigning these waiver opportunities, an alternate is defined as a person who lives in a private ICF-DD, chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the private ICF-DD for an individual being discharged from a publicly-operated facility. A person living at Pinecrest shall have the option to select a private ICF-DD placement in the area of his/her choice in order to designate the individual being discharged from the private ICF-DD as his/her alternate. The bed being vacated in the private ICF-DD must be reserved for 14 days for the placement of a person being discharged from a publicly-operated facility. The person's discharge from a publicly-operated facility and his/her subsequent placement in a private ICF-DD is to occur as close as possible to the actual discharge of the alternate from the private ICF-DD and is not to exceed 14 days from the date of the alternate's discharge and certification for the waiver. The bed may be held vacant beyond the 14 days with the concurrence of the private ICF-DD provider.

3. Except for those waiver opportunities addressed in Paragraphs C.1, 2, 6 and 7 of this Section, waiver opportunities vacated during the waiver year shall be made available to persons residing in or leaving any publicly-operated ICF-DD at the time the facility is transferred to any private ICF-DD under a cooperative endeavor agreement with OCDD, or their alternates.

4. A waiver opportunity will be reserved for persons who choose to transition from a publicly-operated facility to community-based waiver services. The reservation of a waiver opportunity shall not exceed 120 days. However, justification to exceed this 120-day reservation period may be granted as needed.

5. Waiver opportunities not utilized by persons living in public ICFs-DD or their alternates shall be divided between:

a. the next individual on the registry who is living in either a nursing facility or private ICF-DD; and

b. ...

6. Ten waiver opportunities shall be used for qualifying persons with developmental disabilities who receive services from the Developmental Neuropsychiatric Program (DNP). This is a project between OCDD and the Office of Behavioral Health in the development of coordinated wrap-around services for individuals who choose to participate in the waiver and meet the financial and medical eligibility requirements for the waiver.

7. Two hundred and eighty-one waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that a waiver opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 281 waiver opportunities are filled, then supports and services based on the priority determination system will be identified and addressed through other resources currently available for individuals with developmental disabilities.

C.8. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:3526 (December 2011), LR 40:

§13709. Emergency Opportunities

A. Requests for emergency waiver services shall be made through the local governmental entities (human services districts or human services authorities) responsible for coordination of services for persons with developmental disabilities. When a request for emergency services is received, the human services district or human services authority shall complete a priority assessment that incorporates standardized operational procedures with standardized assessment tools to determine the priority of the individual's need in a fair and consistent manner.

B. To be considered for emergency waiver supports, the individual must need long-term supports, not temporary or short-term supports. All of the following criteria shall be used in the determination of priority for an emergency waiver opportunity.

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 31:2901 (November 2005), amended by the Department of Health and Hospitals, Bureau of

Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

Chapter 139. Covered Services

§13901. Individual and Family Support Services

A. Individual and family support (IFS) services are direct support and assistance services provided in the home or the community that allow the participant to achieve and/or maintain increased independence, productivity, enhanced family functioning and inclusion in the community or for the relief of the primary caregiver. Transportation is included in the reimbursement for these services. Reimbursement for these services includes the development of a service plan for the provision of these services, based on the approved POC.

1. Individual and family support day (IFS-D) services will be authorized during waking hours for up to 16 hours when natural supports are unavailable in order to provide continuity of services to the participant. Waking hours are the period of time when the participant is awake and not limited to traditional daytime hours.

a. Additional hours of IFS-D services beyond the 16 hours can be approved based on documented need, which can include medical or behavioral need, and specified in the approved POC.

2. Individual and family support-night (IFS-N) service is direct support and assistance provided during the participant's sleeping "night" hours. Night hours are considered to be the period of time when the participant is asleep and there is a reduced frequency and intensity of required assistance. IFS-N services are not limited to traditional nighttime hours. The IFS-N worker must be immediately available and in the same residence as the participant to be able to respond to the participant's immediate needs. Documentation of the level of support needed, based on the frequency and intensity of needs, shall be included in the POC with supporting documentation in the provider's services plan. Supporting documentation shall outline the participant's safety, communication, and response methodology planned for and agreed to by the participant and/or his/her authorized representative identified in his/her circle of support. The IFS-N worker is expected to remain awake and alert unless otherwise authorized under the procedures noted below.

a. Participants who are able during sleeping hours to notify direct support workers of his/her need for assistance may choose the option of IFS-N services where staff is not required to remain awake.

b. The participant's support team shall assess the participant's ability to awaken staff. If it is determined that the participant is able to awaken staff and requests that the IFS-N worker be allowed to sleep, the POC shall reflect the participant's request.

c. Support teams should consider the use of technological devices that would enable the participant to notify/awaken IFS-N staff. (Examples of devices include wireless pagers, alerting devices such as a buzzer, a bell or a monitoring system.) If the method of awakening the IFS-N worker utilizes technological device(s), the service provider will document competency in use of devices by both the participant and IFS-N staff prior to implementation. The support coordinator will require a demonstration of effectiveness of this service no less than quarterly.

d. A review shall include review of log notes indicating instances when IFS-N staff was awakened to attend to the participant. Also included in the review is acknowledgement by the participant that IFS-N staff responded to his/her need for assistance timely and appropriately. Instances when staff did not respond appropriately will immediately be brought to the support team for discontinuation of allowance of the staff to sleep. The service will continue to be provided by awake and alert staff.

e. Any allegation of abuse/neglect during sleeping hours will result in the discontinuation of allowance of the staff to sleep until investigation is complete. Valid findings of abuse/neglect during night hours will require immediate revision to the POC.

B. IFS services may be shared by up to three waiver participants who may or may not live together and who have a common direct service provider agency. Waiver participants may share IFS services staff when agreed to by the participants and health and welfare can be assured for each participant. The decision to share staff must be reflected on the POC and based on an individual-by-individual determination. Reimbursement rates are adjusted accordingly. Shared IFS services, hereafter referred to as shared support services, may be either day or night services.

C. - C.5. ...

6. accompanying the participant to the hospital and remaining until admission or a responsible representative arrives, whichever occurs first. IFS services may resume at the time of discharge.

D. Exclusions. The following exclusions apply to IFS services.

1. Reimbursement shall not be paid for services furnished by a legally responsible relative. A *legally responsible relative* is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian, or the participant's spouse.

2. IFS-D and IFS-N services shall not include services provided in the IFS-D or IFS-N worker's residence, regardless of the relationship.

3. ISF-D and IFS-N services will not be authorized or provided to the participant while the participant is in a center-based respite facility.

4. Remote assistance serves as a replacement for IFS; therefore, remote assistance and IFS services are not billable during the same time period.

E. Staffing Criteria and Limitations

1. IFS-D or IFS-N services may be provided by a member of the participant's family, provided that the participant does not live in the family member's residence and the family member is not the *legally responsible relative* as defined in §13901.D.1.

2. Family members who provide IFS services must meet the same standards as providers or direct care staff who are unrelated to the participant.

3. An IFS-D or IFS-N worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or a time-limited non-routine need that is documented in the approved POC. An IFS-D or IFS-N shared supports worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or

a time-limited non-routine need that is documented in the approved POC.

F. Place of Service

1. IFS services shall be provided in the state of Louisiana. IFS services may be performed outside the state for a time-limited period or for emergencies. The provision of services outside of the state must be prior-approved by the department.

2. - 3. ...

G. Provider Requirements. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1202 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:2063 (November 2006), LR 33:1647 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13903. Center-Based Respite Care

A. Center-based respite (CBR) care is temporary, short-term care provided to a participant with developmental disabilities who requires support and/or supervision in his/her day-to-day life due to the absence or relief of the primary caregiver. While receiving center-based respite care, the participant's routine is maintained in order to attend school, work or other community activities/outings. The respite center is responsible for providing transportation for community outings, as that is included as part of its reimbursement. Individual and family support services (both day and night) will not be reimbursed while the participant is in a center-based respite facility.

B. ...

C. Service Limits. CBR services shall not exceed 720 hours per participant, per POC year.

1. Participants may request approval of hours in excess of 720 hours. The request must be submitted to the OCDD central office with proper justification and documentation for prior approval.

D. Provider Requirements. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1203 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1648 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13905. Community Integration Development

A. Community integration development (CID) facilitates the development of opportunities to assist participants in becoming involved in the community through the creation of natural supports. The purpose of CID is to encourage and

foster the development of meaningful relationships in the community reflecting the participant's choices and values. Objectives outlined in the plan of care will afford opportunities to increase community inclusion, participation in leisure/recreational activities, and encourage participation in volunteer and civic activities. Reimbursement for this service includes the development of a service plan. To utilize this service, the participant may or may not be present as identified in the approved CID service plan. CID services may be performed by shared staff for up to three waiver participants who have a common direct service provider agency. The shared staff shall be reflected on the POC and based on an individual-by-individual determination. Rates shall be adjusted accordingly.

B. ...

C. Service Limitations. Services shall not exceed 60 hours per participant per POC year which includes the combination of shared and non-shared community integration development.

D. Provider Qualifications. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1203 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1648 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13907. Supported Living

A. Supported living (SL) assists the participant to acquire, improve or maintain those social and adaptive skills necessary to enable a participant to reside in the community and to participate as independently as possible. SL services include assistance and/or training in the performance of tasks such as personal grooming, housekeeping and money management. Payment for this service includes oversight and administration and the development of service plans for the enhancement of socialization with age-appropriate activities that provide enrichment and may promote wellness. The service plan should include initial, introduction, and exploration for positive outcomes for the participant for community integration development. These services also assist the participant in obtaining financial aid, housing, advocacy and self-advocacy training as appropriate, emergency support, trained staff and assisting the participant in accessing other programs for which he/she qualifies. SL participants must be 18 years or older.

B. Place of Service. Services are provided in the participant's residence and/or in the community. The participant's residence includes his/her apartment or house, provided that he/she does not live in the residence of any legally responsible relative. An exception will be considered when the participant lives in the residence of a spouse or disabled parent, or a parent age 70 or older. Family members who are not *legally responsible relatives* as defined in §13901.D.1, can be SL workers provided they meet the same qualifications as any other SL worker.

C. Exclusions

1. Legally responsible relatives may not be SL providers. Payment for SL does not include payments made directly or indirectly to members of the participant's immediate family.

2. SL shall not include the cost of:

a. - e. ...

3. SL services cannot be provided in a substitute family care setting.

D. Service Limit. SL services are limited to one service per day, per POC year, except when the participant is in center-based respite. When a participant living in an SL setting is admitted to a center-based respite facility, the SL provider shall not bill the SL per diem beginning with the date of admission to the center-based respite facility and through the date of discharge from the center-based respite facility.

E. Provider Qualifications. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and meet the module specific requirements for the service being provided.

F. Provider Responsibilities

1. Minimum direct services by the SL agency include two documented phone contacts per week and one documented face-to-face contact per month by the SL provider agency in addition to the approved direct support hours. These required contacts must be completed by the SL agency supervisor or a licensed/certified professional qualified in the state of Louisiana who meets requirements as defined by 42 CFR §483.430.

2. ...

3. Supported living services shall be coordinated with any services listed in the approved POC, and may serve to reinforce skills or lessons taught in school, therapy or other settings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1204 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1648 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13909. Substitute Family Care

A. Substitute family care (SFC) provides for day programming, transportation, independent living training, community integration, homemaker, chore, attendant care and companion services, and medication oversight (to the extent permitted under state law) to participants residing in a licensed substitute family care home. The service is a stand-alone family living arrangement for participants age 18 and older. The SFC house parents assume the direct responsibility for the participant's physical, social, and emotional well-being and growth, including family ties. There shall be no more than three participants living in a substitute family care setting who are unrelated to the SFC provider. Immediate family members (mother, father, brother and/or sister) cannot be substitute family care parents. Reimbursement for this service includes the development of a service plan based on the approved POC.

B. ...

C. Exclusions. The following exclusions apply to SFC services.

1. Remote assistance and surveillance systems may not be used concurrently with SFC services or in the SFC home.

D. Provider Qualifications. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1204 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13911. Day Habilitation

A. Day habilitation is provided in a community-based setting and provides the participant assistance with social and adaptive skills necessary to enable the participant to participate as independently as possible in the community. These services focus on socialization with meaningful age-appropriate activities which provide enrichment and promote wellness, as indicated in the participant's POC.

1. Day habilitation services must be directed by a service plan and provide assistance and/or training in the performance of tasks related to acquiring, maintaining or improving skills including, but not limited to:

a. - f. ...

2. Day habilitation services shall be coordinated with any therapy, employment-related training, or supported employment models that the participant may be receiving. The participant does not receive payment for the activities in which he/she are engaged. The participant must be 18 years of age or older in order to receive day habilitation services.

B. Service Limits. Services can be provided one or more hours per day but not to exceed eight hours per day or 8,320 one quarter hour units of service per POC year.

C. Licensing Requirements. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1204 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13913. Supported Employment

A. Supported employment is competitive work in an integrated work setting, or employment in an integrated work setting in which the participants are working toward competitive work that is consistent with the strengths, resources, priorities, interests, and informed choice of participants for whom competitive employment has not traditionally occurred. The participant must be 18 years of age or older in order to receive supported employment services.

B. These are services provided to participants who are not served by Louisiana Rehabilitation Services, need more intense, long-term follow along and usually cannot be competitively employed because supports cannot be successfully phased out.

C. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed. Supported employment includes activities needed by waiver participants to sustain paid work, including supervision and training and is based on an individualized service plan. Supported employment includes assistance and prompting with:

C.1. - D.1. ...

2. Follow along services are designed for participants who are in supported employment and have been placed in a work site and only require minimum oversight for follow along at the job site. This service is limited to 52 days per POC year.

3. Mobile work crew/enclave is an employment setting in which a group of two or more participants, but fewer than eight perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor). This service is up to eight hours a day, five days per week.

E. Service Exclusions

1. Services shall not be used in conjunction or simultaneously with any other waiver service, except substitute family care, supported living, and skilled nursing services.

2. When supported employment services are provided at a work site in which persons without disabilities are employees, payment will be made only for the adaptations, supervision and training required by individuals receiving waiver services as a result of his/her disabilities, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

3. ...

F. Service Limits

1. One-to-one intensive services shall not exceed 1,280 1/4 hour units per POC year. Services shall be limited to eight hours a day, five days a week, for six to eight weeks.

2. Follow along services shall not exceed 52 days per POC year.

3. Mobile crew/enclave services shall not exceed 8,320 one quarter hour units of service per POC year, without additional documentation. This is eight hours per day, five days per week.

G. Licensing Requirements. The provider must possess a valid certificate of compliance as a community rehabilitation provider (CRP) from Louisiana Rehabilitation Services.

1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13915. Transportation for Day Habilitation and Supported Employment Models

A. Transportation provided for the participant to the site of the day habilitation or supported employment model, or between the day habilitation and supported employment model site (if the participant receives services in more than one place) is reimbursable when day habilitation or supported employment model has been provided. Reimbursement may be made for a one-way trip if reason is documented in provider's transportation log. There is a maximum fee per day that can be charged for transportation regardless of the number of trips per day.

B. Licensing Requirements. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and meet the module specific requirements for the service being provided. The licensed provider must carry \$1,000,000 liability insurance on the vehicles used in transporting the participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:2064 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13917. Employment-Related Training

A. Employment-related training consists of paid employment for participants for whom competitive employment at or above the minimum wage is unlikely, and who need intensive ongoing support to perform in a work setting because of disabilities. Services are aimed at providing participants with opportunities for employment and related training in work environments one to eight hours a day, one to five days a week at a commensurate wage in accordance with United States Department of Labor regulations and guidelines. Employment-related training services include training designed to improve and maintain the participant's capacity to perform productive work and to function adaptively in the work environment. The participant must be 18 years or older in order to receive employment-related training services. Reimbursement for these services includes transportation and requires an individualized service plan.

B. Employment-related training services include, but are not limited to:

1. - 6. ...
7. instruction on basic personal finance skills; and
8. information and counseling to a participant and, as appropriate, his/her family on benefits planning and assistance in the process.

C. Exclusions. The following service exclusions apply to employment-related training.

1. Services are not available to participants who are eligible to participate in programs funded under section 110 of the Rehabilitation Act of 1973 or section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

D. Service Limits. Services shall not exceed eight hours a day, five days a week, and cannot exceed 8,320 one quarter hour units of service per POC year.

E. Licensing Requirements. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided. The provider must also possess a valid certificate of compliance as a community rehabilitation provider (CRP) from Louisiana Rehabilitation Services.

1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13919. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are physical adaptations to the home or a vehicle that are necessary to ensure the health, welfare, and safety of the participant or that enable him/her to function with greater independence in the home and/or community. Without these services, the participant would require additional supports or institutionalization.

B. Such adaptations may include:

1. installation of ramps and/or grab-bars;
2. ...
3. modification of bathroom facilities;
4. installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies for the welfare of the participant; or
5. adaptations to the vehicle, which may include a lift or other adaptations, to make the vehicle accessible to the participant or for the participant to drive.

C. Requirements for Authorization. Items reimbursed through NOW funds shall be supplemental to any adaptations furnished under the Medicaid state plan.

1. Any service covered under the Medicaid state plan shall not be authorized by NOW. The environmental accessibility adaptation(s) must be delivered, installed, operational and reimbursed in the POC year in which it was approved. A written itemized detailed bid, including drawings with the dimensions of the existing and proposed floor plans relating to the modification, must be obtained and submitted for prior authorization. Modifications may be applied to rental or leased property with the written approval of the landlord and approval of the human services authority or district. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the participant.

2. Upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

3. Excluded are those adaptations or improvements to the residence that are of general utility or maintenance and

are not of direct medical or remedial benefit to the participant, including, but not limited to:

3.a. - 6....

D. Service Limits. There is a cap of \$7,000 per participant for environmental accessibility adaptations. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the participant may access another \$7,000. Any additional environmental accessibility expenditures during the dormant period reset the three-year time frame. On a case-by-case basis, with supporting documentation and based on need, a participant may be able to exceed this cap with the prior approval of OCDD central office.

E. - E.2. ...

3. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1206 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13921. Specialized Medical Equipment and Supplies

A. Specialized medical equipment and supplies (SMES) are devices, controls, or appliances which enable the participant to:

1. - 2. ...

3. perceive, control and communicate with the environment in which he/she lives.

B. The service includes medically necessary durable and nondurable medical equipment not covered under the Medicaid state plan. NOW will not cover non-medically necessary items. All items shall meet applicable standards of manufacture, design and installation. Routine maintenance or repair of specialized medical equipment is funded under this service.

C. All alternate funding sources that are available to the participant shall be pursued before a request for the purchase or lease of specialized equipment and supplies will be considered.

D. Exclusion. Excluded are specialized equipment and supplies that are of general utility or maintenance, but are not of direct medical or remedial benefit to the participant. Refer to the New Opportunities Waiver provider manual for a list of examples.

E. Service Limitations. There is a cap of \$1,000 per participant for specialized equipment and supplies. Once a participant reaches 90 percent or greater of the cap and the account has been dormant for three years, the participant may access another \$1,000. Any additional specialized equipment and supplies expenditures during the dormant period reset the three-year time frame. On a case-by-case basis, with supporting documentation and based on need, a participant may be able to exceed this cap with the prior approval of OCDD central office.

F. ...

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR

33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13923. Personal Emergency Response Systems

A. Personal emergency response systems (PERS) is a rented electronic device connected to the person's phone and programmed to signal a response center which enables a participant to secure help in an emergency.

B. Participant Qualifications. Personal emergency response systems (PERS) services are available to those persons who:

1. - 3. ...

C. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the cost of maintenance and training the participant to use the equipment.

D. Reimbursement will be made for a one-time installation fee for the PERS unit. A monthly fee will be paid for the maintenance of the PERS.

E. Provider Qualifications. The provider must be an enrolled Medicaid provider of the PERS. The provider shall install and support PERS equipment in compliance with all applicable federal, state, parish and local laws and meet manufacturer's specifications, response requirements, maintenance records and participant education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1650 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13925. Professional Services

A. Professional services are services designed to increase the participant's independence, participation and productivity in the home, work and community. Participants, up to the age of 21, who participate in NOW must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Professional services may only be furnished and reimbursed through NOW when the services are not covered under the Medicaid state plan. Professional services must be delivered with the participant present and be provided based on the approved POC and an individualized service plan. Service intensity, frequency and duration will be determined by individual need. Professional services may be utilized to:

1. - 2. ...

3. provide training or therapy to a participant and/or his/her natural and formal supports necessary to either develop critical skills that may be self-managed by the participant or maintained according to the participant's needs;

4. ...

5. provide necessary information to the participant, family, caregivers and/or team to assist in the implementation of plans according to the approved POC.

B. Professional services are limited to the following services.

1. Psychological services are direct services performed by a licensed psychologist, as specified by state law and licensure. These services are for the treatment of a

behavioral or mental condition that addresses personal outcomes and goals desired by the participant and his/her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with developmental disabilities. Service intensity, frequency, and duration will be determined by individual need.

2. Social work services are highly specialized direct counseling services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders, and social skills. Services must only address those personal outcomes and goals listed in the approved POC.

3. ...

C. Service Limits. There shall be a \$2,250 cap per participant per POC year for the combined range of professional services in the same day but not at the same time. Additional services may be prior authorized if the participant reaches the cap before the expiration of the plan of care and the participant's health and safety is at risk.

D. Provider Qualifications. The provider of professional services must be a Medicaid-enrolled provider. Each professional must possess a current valid Louisiana license to practice in his/her field and have at least one year of experience post licensure in his/her area of expertise.

E. - E.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1650 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13927. Skilled Nursing Services

A. Skilled nursing services are medically necessary nursing services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse. Skilled nursing services shall be provided by a licensed, enrolled home health agency and require an individual nursing service plan. These services must be included in the participant's approved POC. All Medicaid state plan services must be utilized before accessing this service. Participants, up to the age of 21, must access these services as outlined on the POC through the Home Health Program.

B. When there is more than one participant in the home receiving skilled nursing services, services may be shared and payment must be coordinated with the service authorization system and each participant's approved POC. Nursing consultations are offered on an individual basis only.

C. Provider Qualifications. The provider must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13929. One Time Transitional Expenses

A. One-time transitional expenses are those allowable expenses incurred by participants who are being transitioned from an ICF-DD to his/her own home or apartment in the community of their choice. *Own home* shall mean the participant's own place of residence and does not include any family members home or substitute family care homes.

B. - B.3. ...

4. non-refundable security deposits.

C. Service Limits. Set-up expenses are capped at \$3,000 over a participant's lifetime.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13931. Adult Companion Care

A. Adult companion care services assist the participant to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage his/her own household with limited supports. The companion is a principal care provider who provides services in the participant's home and lives with the participant as a roommate. Adult companion care services may be furnished through self-direction or through a licensed provider organization as outlined in the participant's POC. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the participant's POC;

2. providing community integration and coordination of transportation services, including medical appointments; and

3. providing medical and physical health care that can be delivered by unlicensed persons in accordance with Louisiana's Nurse Practice Act.

B. Adult companion care services are arranged by provider organizations that are subject to licensure. The companion is an employee of the provider organization and is responsible for providing limited, daily direct services to the participant.

1. The companion shall be available in accordance with a pre-arranged time schedule and available by telephone for crisis support on short notice.

2. Services may not be provided by a family member who is not the participant's spouse, parent or legal guardian.

C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the participant's POC which defines all of the shared responsibilities between the companion and the participant. The written agreement shall include, but is not limited to:

- a. types of support provided by the companion;
- b. activities provided by the companion; and
- c. a typical weekly schedule.

2. Revisions to this agreement must be facilitated by the provider organization and approved by the support team. Revisions may occur at the request of the participant, the companion, the provider or other support team members.

3. The provider organization is responsible for performing the following functions which are included in the daily rate:

- a. arranging the delivery of services and providing emergency services;
- b. making an initial home visit to the participant's home, as well as periodic home visits as required by the department;
- c. contacting the companion a minimum of once per week or as specified in the participant's plan of care; and
- d. providing 24-hour oversight and supervision of the adult companion care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the participant which assures that:

- a. the companion's portion of expenses must be at least \$200 per month, but shall not exceed 50 percent of the combined monthly costs which includes rent, utilities and primary telephone expenses; and
- b. inclusion of any other expenses must be negotiated between the participant and the companion. These negotiations must be facilitated by the provider and the resulting agreement must be included in the written agreement and in the participant's POC.

D. Companion Responsibilities

- 1. The companion is responsible for:
 - a. participating in, and abiding by, the POC;
 - b. maintaining records in accordance with state and provider requirements; and
 - c. purchasing his/her own food and personal care items.

E. Service Limits

1. Adult companion care services may be authorized for up to 360 hours per year as documented in the participant's POC.

F. Service Exclusions

1. Adult companion care services cannot be provided or billed for at the same time as respite care services.

2. Participants receiving adult companion care services are not eligible for receiving the following services:

- a. supported living;
- b. individual and family support;
- c. substitute family care; or
- d. skilled nursing.

G. Provider Qualifications. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13933. Remote Assistance

A. Remote visual monitoring and on-site audio response system(s) include the provision of oversight and monitoring within the residential setting of adult waiver participants through the off-site electronic surveillance. Also included is the provision of stand-by intervention staff prepared for prompt engagement with the participant and/or immediate deployment to the residential setting.

B. Remote visual monitoring and on-site audio response system may be installed in the participant's home in which residing adult participant(s), guardian(s), and support team(s) request such surveillance and monitoring in place of on-site staffing.

1. Use of the system may be restricted to certain hours as identified through the POC(s) of the participant(s) involved.

2. The request for the system to be installed must be reviewed and approved by the OCDD assistant secretary or designee prior to installation.

C. Provider Responsibilities

1. To be reimbursed for operating a remote assistance system, a provider must adhere to all applicable policies and procedures.

2. Each remote site will have a written policy and procedure approved by the human services authority or district that defines emergency situations and details how remote and float staff will respond to each. This information must be available to support coordinators and providers serving participants.

3. Emergency response drills must be carried out once per quarter per shift in each home equipped with and capable of utilizing the electronic monitoring service. Documentation of the drills must be available for review upon request by OCDD or its representative.

D. Service Limits

1. Services may be shared by up to four participants who live together.

E. Service Exclusions

1. Remote assistance and surveillance systems which have not received specific approval by the OCDD assistant secretary or designee are excluded.

2. Remote assistance and surveillance systems may not be used concurrently with substitute family care services or in the substitute family care home.

3. Remote assistance is not to be used to monitor direct care staff.

4. Remote assistance serves as a replacement for individual and family support services (IFS); therefore, remote assistance and IFS services are not billable during the same time period.

5. Remote assistance cannot be used in place of direct care staff to monitor minors (participants under the age of 18 years).

6. Remote assistance services may be provided by a member of the participant's family, provided that the participant does not live in the family member's residence and the family member is not the legally responsible relative. A *legally responsible relative* is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian, or the participant's spouse.

F. Provider Requirements. Providers must be licensed by the Louisiana Department of Health and Hospitals as a home and community-based services provider and must meet the module specific requirements for the service being provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13935. Housing Stabilization Transition Service

A. Housing stabilization transition service enables participants who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the participant is in an institution and preparing to exit the institution using the waiver. The service includes the following components:

1. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

- a. access to housing;
- b. meeting the terms of a lease;
- c. eviction prevention;
- d. budgeting for housing/living expenses;
- e. obtaining/accessing sources of income necessary for rent;
- f. home management;
- g. establishing credit; and
- h. understanding and meeting the obligations of tenancy as defined in the lease terms;

2. assisting the participant to view and secure housing as needed. This may include arranging or providing transportation. The participant shall be assisted in securing supporting documents/records, completing/submitted applications, securing deposits, and locating furnishings;

3. developing an individualized housing support plan based upon the housing assessment that:

- a. includes short- and long-term measurable goals for each issue;
- b. establishes the participant's approach to meeting the goal; and
- c. identifies where other provider(s) or services may be required to meet the goal;

4. participating in the development of the plan of care and incorporating elements of the housing support plan; and

5. exploring alternatives to housing if permanent supportive housing is unavailable to support completion of transition.

B. This service is only available upon referral from the support coordinator and is not duplicative of other waiver services, including support coordination. It is only available to persons who are residing in a state of Louisiana permanent supportive housing unit or who are linked for the state of Louisiana permanent supportive housing selection process.

C. Participants may not exceed 165 combined units of this service and the housing stabilization service.

1. Exceptions to the 165 unit limit can only be made with written approval from the OCDD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§13937. Housing Stabilization Service

A. Housing stabilization service enables waiver participants to maintain their own housing as set forth in the participant's approved POC. Services must be provided in the home or a community setting. This service includes the following components:

1. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

- a. access to housing;
- b. meeting the terms of a lease;
- c. eviction prevention;
- d. budgeting for housing/living expenses;
- e. obtaining/accessing sources of income necessary for rent;
- f. home management;
- g. establishing credit; and
- h. understanding and meeting the obligations of tenancy as defined in the lease terms;

2. participating in the development of the POC, incorporating elements of the housing support plan;

3. developing an individualized housing stabilization service provider plan based upon the housing assessment that includes short and long-term measurable goals for each issue, establishes the participant's approach to meeting the goal, and identifies where other provider(s) or services may be required to meet the goal;

4. providing supports and interventions according to the individualized housing support plan. If additional supports or services are identified as needed outside the scope of housing stabilization service, the needs must be communicated to the support coordinator;

5. providing ongoing communication with the landlord or property manager regarding the participant's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager;

6. updating the housing support plan annually or as needed due to changes in the participant's situation or status; and

7. if at any time the participant's housing is placed at risk (e.g., eviction, loss of roommate or income), housing

stabilization service will provide supports to retain housing or locate and secure housing to continue community-based supports, including locating new housing, sources of income, etc.

B. This service is only available upon referral from the support coordinator and the service is not duplicative of other waiver services including support coordination. It is only available to persons who are residing in a state of Louisiana permanent supportive housing unit.

C. Participants may not exceed 165 combined units of this service and the housing stabilization transition service.

1. Exceptions to the 165 unit limit can only be made with written approval from the OCDD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

Chapter 141. Self-Direction Initiative

§14101. Self-Direction Service Delivery Option

A. The self-direction initiative is a voluntary, self-determination option which allows the participant to coordinate the delivery of NOW services, as designated by OCDD, through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the participant utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Participant Responsibilities. Waiver participants choosing the self-directed service delivery option must understand the rights, risks and responsibilities of managing his/her own care and individual budget. If the participant is unable to make decisions independently, he/she must have an authorized representative who understands the rights, risks and responsibilities of managing his/her care and supports within his/her individual budget. Responsibilities of the participant or authorized representative include:

1. completion of mandatory trainings, including the rights and responsibilities of managing his/her own services and supports and individual budget;

2. participation in the self-direction service delivery option without a lapse in or decline in quality of care or an increased risk to health and welfare; and

a. ...

3. participation in the development and management of the approved personal purchasing plan:

a. this annual budget is determined by the recommended service hours listed in the participant's POC to meet his/her needs;

b. the participant's individual budget includes a potential amount of dollars within which the participant or his/her authorized representative exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of the Self-Direction Service Delivery Option. Termination of participation in the self-direction service delivery option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. The waiver participant may chose at any time to withdraw from the self-direction service delivery option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service delivery option for a participant and require him/her to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-direction service delivery option;

b. the participant is no longer able to direct his/her own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the authorized representative; or

d. over three consecutive payment cycles, the participant or authorized representative:

i. - iv. ...

D. All services rendered shall be prior approved and in accordance with the plan of care.

E. All services must be documented in service notes, which describes the services rendered and progress towards the participant's personal outcomes and his/her plan of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

Chapter 143. Reimbursement

§14301. Reimbursement Methodology

A. Reimbursement for services shall be a prospective flat rate for each approved unit of service provided to the participant. One quarter hour (15 minutes) is the standard unit of service, which covers both service provision and administrative costs for the following services:

1. center-based respite;

2. community integration development:

a. services furnished to two participants who choose to share supports will be reimbursed at 75 percent of the full rate for each recipient; and

b. services furnished to three participants who choose to share supports will be reimbursed at 66 percent of the full rate for each participant;

3. day habilitation;

4. employment related training;

5. individualized and family support-day and night;

a. - b. Repealed.

6. professional services;

7. skilled nursing services:

a. services furnished to two participants who choose to share supports will be reimbursed at 75 percent of the full rate for each participant;

b. services furnished to three participants who choose to share supports will be reimbursed at 66 percent of the full rate for each participant;

c. nursing consultations are offered on an individual basis only.

d. - e. ...

8. supported employment, one-to-one intensive and mobile crew/enclave;

9. housing stabilization transition; and

10. housing stabilization.

B. The following services are to be paid at cost, based on the need of the participant and when the service has been prior authorized and on the POC:

1. - 3. ...

C. The following services are paid through a per diem:

1. ...

2. supported living;

3. supported employment-follow along; and

4. adult companion care.

D. - K. ...

L. Remote assistance is paid through an hourly rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), amended LR 36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April 2013), LR 40:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 as it will allow waiver participants more latitude to direct their own care and bring more unification to the delivery of services in the home setting.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by providing additional housing-related and other support services to waiver participants.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 27, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge,

LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home and Community-Based Services Waivers—New Opportunities Waiver Policy Clarifications and New Services

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

It is anticipated that the implementation of this proposed Rule will result in estimated state programmatic costs of \$491,213 for FY 13-14, \$1,074,386 for FY 14-15 and \$1,083,450 for FY 15-16. There is no direct appropriation to fund the additional expenditures associated with these new services. The additional expenditures will be covered through efficiencies from heightened utilization controls. To the extent those efficiencies are not realized in FY 14, sufficient revenues may not exist to support the total expenditures. It is anticipated that \$5,822 (\$2,911 SGF and \$2,911 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$832,919 for FY 13-14, \$1,714,779 for FY 14-15 and \$1,713,995 for FY 15-16. It is anticipated that \$2,911 will be expended in FY 13-14 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule amends the provisions governing the New Opportunities Waiver in order to clarify the provisions of the waiver and to add the following new services to the waiver program: 1) Housing Stabilization Transition; 2) Housing Stabilization; 3) Remote Assistance; and 4) Adult Companion Care. It is anticipated that implementation of this proposed Rule will increase program expenditures in the New Opportunities Waiver by approximately \$1,318,310 for FY 13-14, \$2,789,165 for FY 14-15 and \$2,797,445 for FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will have no effect on competition and employment.

J. Ruth Kennedy
Director
1310#072

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Supports Waiver
Housing Stabilization and Transition Services
(LAC 50:XXI.5717, 5719 and 6101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to adopt LAC 50:XXI.5717-5719, and to amend §6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Due to a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for Supports Waiver services to reduce the reimbursement rates (*Louisiana Register*, Volume 39, Number 4).

The department now proposes to amend the provisions governing the Supports Waiver in order to include housing stabilization transition services and housing stabilization services as covered services under the waiver program. These services will enable participants who are transitioning into a permanent supportive housing unit to secure and maintain their own housing in the community.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 57. Covered Services

§5717. Housing Stabilization Transition Services

A. Housing stabilization transition services enable participants who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the participant is in an institution and preparing to exit the institution using the waiver. The service includes the following components:

1. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

- a. access to housing;
- b. meeting the terms of a lease;
- c. eviction prevention;
- d. budgeting for housing/living expenses;
- e. obtaining/accessing sources of income necessary for rent;
- f. home management;
- g. establishing credit; and

h. understanding and meeting the obligations of tenancy as defined in the lease terms;

2. assisting the participant to view and secure housing as needed, which may include arranging and providing transportation;

3. assisting the participant to secure supporting documents/records, completing/submitting applications, securing deposits, and locating furnishings;

4. developing an individualized housing support plan based upon the housing assessment that:

a. includes short- and long-term measurable goals for each issue;

b. establishes the participant's approach to meeting the goal; and

c. identifies where other provider(s) or services may be required to meet the goal;

5. participating in the development of the plan of care and incorporating elements of the housing support plan; and

6. exploring alternatives to housing if permanent supportive housing is unavailable to support completion of transition.

B. Housing stabilization transition services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. This service is only available to persons who are residing in a state of Louisiana permanent supportive housing unit or who are linked for the state of Louisiana permanent supportive housing selection process.

C. Participants may not exceed 165 combined units of this service and the housing stabilization service.

1. Exceptions to exceed the 165 unit limit may be made only with written approval from the OCDD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5719. Housing Stabilization Services

A. Housing stabilization services enable waiver participants to maintain their own housing as set forth in the participant's approved plan of care. Services must be provided in the home or a community setting. This service includes the following components:

1. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

- a. access to housing;
- b. meeting the terms of a lease;
- c. eviction prevention;
- d. budgeting for housing/living expenses;
- e. obtaining/accessing sources of income necessary

for rent;

- f. home management;
- g. establishing credit; and
- h. understanding and meeting the obligations of tenancy as defined in the lease terms;

2. participating in the development of the plan of care, incorporating elements of the housing support plan;

3. developing an individualized housing stabilization service provider plan based upon the housing assessment

that includes short- and long-term measurable goals for each issue, establishes the participant's approach to meeting the goal, and identifies where other provider(s) or services may be required to meet the goal;

4. providing supports and interventions according to the individualized housing support plan. If additional supports or services are identified as needed outside the scope of housing stabilization service, the needs must be communicated to the support coordinator;

5. providing ongoing communication with the landlord or property manager regarding the participant's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager;

6. updating the housing support plan annually or as needed due to changes in the participant's situation or status; and

7. if at any time the participant's housing is placed at risk (e.g., eviction, loss of roommate or income), housing stabilization services will provide supports to retain housing or locate and secure housing to continue community-based supports, including locating new housing, sources of income, etc.

B. Housing stabilization services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services including support coordination. It is only available to persons who are residing in a state of Louisiana permanent supportive housing unit.

C. Participants may not exceed 165 combined units of this service and the housing stabilization transition service.

1. Exceptions to exceed the 165 unit limit may be made only with written approval from the OCDD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

Chapter 61. Reimbursement Methodology

§6101. Reimbursement Methodology

A. - D. ...

E. Respite, housing stabilization transition services and housing stabilization services shall be reimbursed at a prospective flat rate for each approved unit of service provided to the recipient. One-quarter hour (15 minutes) is the standard unit of service.

F. - M.I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), amended LR 37:2158 (July 2011), LR 39:1050 (April 2013), LR 40:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it provides support for the unification of families in a home setting.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it is expected to ensure waiver participants have access to housing-related support services.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 27, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—Supports Waiver Housing Stabilization and Transition Services

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

It is anticipated that the implementation of this proposed Rule will result in estimated state programmatic costs of \$10,549 for FY 13-14, \$16,722 for FY 14-15 and \$18,417 for FY 15-16. There is no direct appropriation to fund the additional expenditures associated with these new services. The additional expenditures will be covered through efficiencies from heightened utilization controls. To the extent those efficiencies are not realized in FY 14, sufficient revenues may not exist to support the total expenditures. It is anticipated that \$738 (\$369 SGF and \$369 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$17,674 for FY 13-14, \$26,689 for FY 14-15 and \$29,134 for FY 15-16. It is anticipated that \$369 will be expended in FY 13-14 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule amends the provisions governing the Supports Waiver in order to adopt provisions to include housing stabilization transition services and housing stabilization services as covered services under the waiver program. It is anticipated that implementation of this proposed Rule will increase program expenditures in the Medicaid Program by approximately \$27,485 for FY 13-14, \$43,411 for FY 14-15 and \$47,551 for FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will have no have effect on competition and employment.

J. Ruth Kennedy
Director
1310#073

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

Pharmacy Benefits Management Program
Medication Administration
Influenza Vaccinations
(LAC 50:XXIX.123, 991 and 993)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.123 and §991, and to adopt §993 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of H1N1 vaccine by qualified Medicaid enrolled pharmacists (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of the influenza vaccine for all Medicaid recipients, and to provide reimbursement for the cost of the influenza vaccine for Medicaid recipients 19 years of age and older (*Louisiana Register*, Volume 36, Number 12). This proposed Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§123. Medication Administration

A. Influenza Vaccine Administration. The department shall provide coverage for administration of the influenza vaccine by a qualified pharmacist when:

1. the pharmacist has been credentialed by the Louisiana Board of Pharmacy to administer medications; and

2. the pharmacist is Medicaid-enrolled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 40:

Chapter 9. Methods of Payment

Subchapter H. Vaccines

§991. Vaccine Administration Fees

A. ...

B. Effective for dates of service on or after January 1, 2011, the reimbursement for administration of the influenza vaccine for all recipients shall be reimbursed at \$15.22 for subcutaneous or intramuscular injection, \$10.90 for nasal/oral administration or billed charges, whichever is the lesser amount. This fee includes counseling, when performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 40:

§993. Vaccine Reimbursement

A. Effective for dates of service on or after January 1, 2011, the influenza vaccine for recipients aged 19 and over shall be reimbursed at 90 percent of the 2009 Louisiana Medicare average sales price (ASP) allowable or billed charges, whichever is the lesser amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by increasing recipient access to flu vaccines.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, and family poverty in relation to individual and community asset development as described in R.S. 49:973 by easing the financial burden on families for costs associated with flu vaccines.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 27, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Pharmacy Benefits Management Program—Medication Administration Influenza Vaccinations**

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

It is anticipated that the implementation of this proposed Rule will result in estimated state general fund programmatic savings of \$26,107 for FY 13-14, \$28,141 for FY 14-15 and \$29,142 for FY 15-16 since it is anticipated that flu episodes will decrease as vaccinations increase which will result in greater programmatic savings associated with the treatment of flu episodes than the costs associated with the vaccine administration. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will reduce federal revenue collections by approximately \$44,491 for FY 13-14, \$44,913 for FY 14-15 and \$46,103 for FY 15-16. It is anticipated that \$164 will be expended in FY 13-14 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule continues the provisions of the January 1, 2011 Emergency Rule which amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of the influenza vaccine for all Medicaid recipients, and to provide reimbursement for the cost of the influenza vaccine for Medicaid recipients 19 years of age and older. It is anticipated that implementation of this proposed Rule will have a net reduction in programmatic expenditures in the Medicaid Program by approximately \$70,926 for FY 13-14, \$73,054 for FY 14-15 and \$75,245 for FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will not have an effect on competition and employment.

J. Ruth Kennedy
Director
1310#074

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Rural Health Clinics
Fluoride Varnish Applications
(LAC 50:XI.16301 and 16701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.16301 and §16701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing rural health clinics (RHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 37, Number 9)*. The department promulgated an Emergency Rule which amended the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients (*Louisiana Register, Volume 37, Number 11*). The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule to clarify the provisions governing the scope of services for fluoride varnish applications (*Louisiana Register, Volume 38, Number 1*). This proposed Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 15. Rural Health Clinics

Chapter 163. Services

§16301. Scope of Services

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the RHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the RHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the RHC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1904 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2631 (September 2011), LR 40:

Chapter 167. Reimbursement Methodology

§16701. Prospective Payment System

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the RHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the RHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011), LR 40:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will improve health outcomes and reduce the occurrence of future dental disease.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, and family poverty in relation to individual or community asset development as described in R.S. 49:973 as it is expected to reduce the costs associated with the treatment of dental disease which will ease the financial burden on families.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is

responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 27, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Rural Health Clinics
Fluoride Varnish Applications**

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

It is anticipated that the implementation of this proposed Rule will result in estimated state programmatic costs of \$7,554 for FY 13-14, \$7,872 for FY 14-15 and \$8,152 for FY 15-16. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$12,696 for FY 13-14, \$12,563 for FY 14-15 and \$12,896 for FY 15-16. It is anticipated that \$205 will be expended in FY 13-14 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule continues the provisions of the January 20, 2012 Emergency Rule which amended the provisions governing rural health clinics to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients. It is anticipated that implementation of this proposed Rule will increase programmatic expenditures in the Medicaid Program by approximately \$19,840 for FY 13-14, \$20,435 for FY 14-15 and \$21,048 for FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will have no have effect on competition and employment.

J. Ruth Kennedy
Director
1310#075

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Third Party Liability
Provider Billing and Trauma Recovery
(LAC 50:I.Chapter 83)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:I.Chapter 83 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing third party liability to require providers to include notification of the existence or possible existence of a liable third party to the Medicaid Third Party Recovery Unit and to Medicaid contracted managed care entities (*Louisiana Register*, Volume 39, Number 3).

In compliance with a civil court ruling from the U.S. District Court, Middle District of Louisiana, the department now proposes to amend the provisions governing third party liability to discontinue the practice of allowing providers to pursue collection of the difference from liable third parties in traumatic injury cases.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 9. Recovery

Chapter 83. Third Party Liability

Subchapter D. Provider Billing and Trauma Recovery

§8341. Definitions

Difference—Repealed.

Initial Lien—the first letter or other notice sent by the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity(s) via mail to the recipient or his representative providing notification of the lien amount.

Updated Lien—the most recent letter or other notice sent by the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity(s) via mail to the recipient or his representative, subsequent to the initial lien, providing notification of an updated lien amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:463 (March 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:509 (March 2013), LR 40:

§8343. Introduction

A. ...

B. The Department of Health and Hospitals will no longer allow providers to pursue a liable or potentially liable third party for payment in excess of the Medicaid paid amount to a provider for health care services rendered. Existing federal law preempts such an allowance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 33:463 (March 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§8345. Provider Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:463 (March 2007), amended LR 34:661 (April 2008), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:509 (March 2013), amended LR 40:

§8347. Recipient Responsibilities

A. The claims included in the initial lien calculated by the Medicaid Third Party Liability Recovery Unit and the Medicaid contracted managed care entity(s) shall be deemed as an accurate reflection of the total amount paid by Medicaid and the Medicaid contracted managed care entity(s), unless challenged in writing by the recipient or his representative within 30 days of the date of the initial lien notification to the Medicaid recipient or his representative.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:464 (March 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:509 (March 2013), LR 40:

§8349. Noncompliance and Violations

A. A provider who has filed and accepted Medicaid payment and who also accepts payment in excess of billed charges or a duplicate payment for the same health care services may be referred for investigation and prosecution for possible violation of either federal or state laws and may be excluded from participation in the Medicaid Program.

B. - B.3. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:464 (March 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:509 (March 2013), amended LR 40:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 27, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Third Party Liability Provider Billing and Trauma Recovery

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

It is anticipated that implementation of this proposed Rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 13-14. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 13-14. It is anticipated that \$246 will be collected in FY 13-14 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

This proposed rule amends the provisions governing third party liability to discontinue the practice of allowing providers to pursue collection of the difference from liable third parties in traumatic injury cases. It is anticipated that implementation of this proposed rule may negatively impact providers seeking collection of the difference and could be beneficial to those providers who are deemed liable third parties in FY 13-14, FY 14-15, and FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

J. Ruth Kennedy
Director
1310#076

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Class III (Solution-Mining) Injection Wells (LAC 43:XVII.Chapter 33)

The Department of Natural Resources, Office of Conservation proposes to adopt LAC 43:XVII.Chapter 33 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed action will adopt Statewide Order No. 29-M-3, which provides comprehensive regulations for Class III (Solution-Mining) Injection Wells, as enacted by Act 368 and Act 369 of the 2013 Legislative Session.

Title 43

NATURAL RESOURCES

Part XVII. Office of Conservation—Injection and Mining

Subpart 5. Statewide Order No. 29-M-3 Chapter 33. Class III (Solution-Mining) Injection Wells

§3301. Definitions

Act—Part I, Chapter 1 of Title 30 of the Louisiana Revised Statutes.

Active Cavern Well—a solution-mining well that is actively being used, or capable of being used, to mine minerals, including standby wells. The term does not include an inactive cavern well.

Application—the filing on the appropriate Office of Conservation form(s), including any additions, revisions, modifications, or required attachments to the form(s), for a permit to operate a solution-mining well or parts thereof.

Aquifer—a geologic formation, groups of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Blanket Material—sometimes referred to as a "pad." The blanket material is a fluid placed within a cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, diesel, mineral oil, or some fluid possessing similar noncorrosive, nonsoluble, low density properties. The blanket material is placed between the cavern's outermost hanging string and innermost cemented casing.

Brine—water within a salt cavern that is completely or partially saturated with salt.

Cap Rock—the porous and permeable strata immediately overlying all or part of the salt stock of some salt structures typically composed of anhydrite, gypsum, limestone, and occasionally sulfur.

Casing—metallic pipe placed and cemented in the wellbore for the purpose of supporting the sides of the wellbore and to act as a barrier preventing subsurface migration of fluids out of or into the wellbore.

Catastrophic Collapse—the sudden or utter failure of the overlying strata caused by the removal or otherwise weakening of underlying sediments.

Cavern Roof—the uppermost part of a cavern being just below the neck of the wellbore. The shape of the salt cavern roof may be flat or domed.

Cavern Well—a well extending into the salt stock to facilitate the injection of fluids into a cavern.

Cementing—the operation (either primary, secondary, or squeeze) whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

Closed Cavern Well—a solution-mining well that is no longer used, or capable of being used, to solution mine minerals and is thus subject to the closure and post-closure requirements of §3337. The term does not include an inactive well or a previously closed cavern well.

Circulate to the Surface—the observing of actual cement returns to the surface during the primary cementing operation.

Commissioner—the Commissioner of Conservation for the State of Louisiana.

Contamination—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable of their intended purposes.

Discharge—the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, ground, or waters of the state. A discharge shall not include that which is allowed through a federal or state permit.

Dual-Bore Mining—for the purposes of these rules, dual bore mining shall be defined as the solution mining process whereby fluid injection and brine extraction are accomplished through different permitted wells.

Effective Date—the date of final promulgation of these rules and regulations.

Emergency Shutdown Valve—a valve that automatically closes to isolate a solution-mining well from surface piping in the event of a specified condition that, if uncontrolled, may cause an emergency.

Exempted Aquifer—an aquifer or its portion that meets the criteria of the definition of underground source of drinking water but which has been exempted according to the procedures set forth in §3303.E.2.

Existing Solution-Mining Well or Project—a well, salt cavern, or project permitted to solution-mine prior to the effective date of these regulations.

Facility or Activity—any facility or activity, including land or appurtenances thereto, that is subject to these regulations

Fluid—any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

Ground Subsidence—the downward settling of the Earth's surface with little or no horizontal motion in response to natural or manmade subsurface actions.

Groundwater Aquifer—water in the saturated zone beneath the land surface that contains less than 10,000 mg/l total dissolved solids.

Groundwater Contamination—the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

Hanging String—casing whose weight is supported at the wellhead and hangs vertically in a larger cemented casing or another larger hanging string.

Improved Sinkhole—a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

Inactive Cavern Well—a solution-mining well that is capable of being used to mine minerals but is not being so used, as evidenced by the filing of a written notice with the Office of Conservation in accordance with §3309.I.3.

Injection and Mining Division—the Injection and Mining Division of the Louisiana Office of Conservation within the Department of Natural Resources.

Injection Well—a well into which fluids are being injected other than fluids associated with active drilling operations.

Injection Zone—a geological formation, group of formations or part of a formation receiving fluids through a well.

Leaching—the process whereby an undersaturated fluid is introduced into a cavern thereby dissolving additional salt and increasing the volume of the salt cavern.

Mechanical integrity—an injection well has mechanical integrity if there is no significant leak in the casing, tubing, or packer and there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

Migrating—any movement of fluids by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as allowed by law, regulation, or permit.

New Cavern Well—a solution-mining well permitted by the Office of Conservation after the effective date of these rules.

Office of Conservation—the Louisiana Office of Conservation within the Department of Natural Resources.

Open Borehole—that portion of a well below the production casing and above the solution-mining cavern.

Operator—the person recognized by the Office of Conservation as being responsible for the physical operation of the facility or activity subject to regulatory authority under these rules and regulations.

Owner—the person recognized by the Office of Conservation as owning the facility or activity subject to regulatory authority under these rules and regulations.

Permanent Conclusion—No additional solution-mining activities will be conducted in the cavern. This term will not apply to caverns that are being converted to hydrocarbon storage.

Permit—an authorization, license, or equivalent control document issued by the commissioner to implement the requirements of these regulations. Permit includes, but is not limited to, area permits and emergency permits. Permit does not include UIC authorization by rule or any permit which has not yet been the subject of final agency action, such as a draft permit.

Person—an individual, association, partnership, public or private corporation, firm, municipality, state or federal agency and any agent or employee thereof, or any other juridical person.

Previously Closed Cavern Well—a solution-mining well that is no longer used, or capable of being used, to solution mine minerals and was closed prior to the effective date of these regulations.

Produced Water—liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining for brine.

Public Water System—a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

1. any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
2. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

Release—the accidental or intentional spilling, pumping, leaking, pouring, emitting, leaching, escaping, or dumping of pollutants into or on any air, land, groundwater, or waters of the state. A release shall not include that which is allowed through a federal or state permit.

Salt Dome—a diapiric, typically circular structure that penetrates, uplifts, and deforms overlying sediments as a result of the upward movement of a salt stock in the subsurface. Collectively, the salt dome includes the salt stock and any overlying uplifted sediments.

Salt Stock—a typically cylindrical formation composed chiefly of an evaporite mineral that forms the core of a salt dome. The most common form of the evaporite mineral is halite known chemically as sodium chloride (NaCl). Cap rock shall not be considered a part of the salt stock.

Schedule of Compliance—a schedule or remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the act and these regulations.

Site—the land or water area where any facility or activity is physically located or conducted including adjacent land used in connection with the facility or activity.

Solution-Mined Cavern—a cavity created within the salt stock by dissolution with water.

Solution-Mining Well—a Class III well; a well which injects fluids for extraction of minerals or energy.

State—the state of Louisiana.

Subsidence—see *ground subsidence*.

Surface Casing—the first string of casing installed in a well, excluding conductor casing.

UIC—the Louisiana State Underground Injection Control Program.

Unauthorized Discharge—a continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and

conditions, or of any applicable regulation, compliance schedule, variance, or exception of the Commissioner of Conservation.

Underground Source of Drinking Water—an aquifer or its portion:

1. which supplies any public water system; or
2. which contains a sufficient quantity of groundwater to supply a public water system; and
 - a. currently supplies drinking water for human consumption; or
 - b. contains fewer than 10,000 mg/1 total dissolved solids; and which is not an exempted aquifer.

USDW—see *underground source of drinking water*.

Waters of the State—both surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters, and the Gulf of Mexico.

Well—a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or, a subsurface fluid distribution system.

Well Plug—a fluid-tight seal installed in a borehole or well to prevent movement of fluids.

Well Stimulation—several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for injection fluids to move more readily into the formation, and includes:

1. surging;
2. jetting;
3. blasting;
4. acidizing; or
5. hydraulic fracturing.

Workover—to perform one or more of a variety of remedial operations on an injection well, such as cleaning, perforation, changing tubing, deepening, squeezing, plugging back, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3303. General Provisions

A. Applicability

1. These rules and regulations shall apply to all applicants, owners and/or operators of solution-mining wells in the state of Louisiana.

2. Rules governing the permitting, drilling, constructing, operating, and maintaining of Class III solution-mining wells previously codified in applicable sections of Statewide Order No. 29-N-1 (LAC 43:XVII, Subpart 1) or successor documents are now codified in Statewide Order No. 29-M-3 (LAC 43:XVII, Subpart 5) or successor documents.

3. An applicant, owner, and operator of a solution-mining well should become familiar with these rules and regulations to assure that the well and cavern shall comply with these rules and regulations.

B. Prohibition of Unauthorized Injection

1. Construction, conversion, or operation of a solution-mining well without obtaining a permit from the Office of Conservation is a violation of these rules and regulations and applicable laws of the state of Louisiana.

2. For existing solution-mining wells that are in compliance with Statewide Order No. 29-N-1, but not in compliance with Statewide Order No. 29-M-3 as of the effective date of these rules, they may continue to operate for one year under Statewide Order No. 29-N-1. Within that year, the owner or operator must submit an alternate means of compliance or a request for a variance pursuant to §3303.F and/or present a corrective action plan to meet the requirements of Statewide Order No. 29-M-3. During the review period of the request until a final determination is made regarding the alternate means of compliance or variance and/or corrective action plan, the affected solution-mining well may continue to operate in compliance.

3. By no later than one year after authorization of these rules the owner or operator shall provide for review documentation of any variance previously authorized by the Office of Conservation. Based on that review, the commissioner may terminate, modify, or revoke and reissue the existing permit with the variance if it is determined that continued operations cannot be conducted in a way that is protective of the environment, or the health, safety, and welfare of the public. The process for terminating, modifying, or revoking and reissuing the permit with the variance is set forth in 3311.K. During the review period the affected solution-mining well may continue to operate in compliance with such variance.

C. Prohibition on Movement of Fluids into Underground Sources of Drinking Water

1. No authorization by permit shall allow the movement of injected fluids into underground sources of drinking water or outside the salt stock. The owner or operator of the solution-mining well shall have the burden of showing that this requirement is met.

2. The Office of Conservation may take emergency action upon receiving information that injected fluids are present in or likely to enter an underground source of drinking water or may present an imminent and substantial endangerment to the environment, or the health, safety and welfare of the public.

D. Prohibition of Surface Discharges. The intentional, accidental, or otherwise unauthorized discharge of fluids, wastes, or process materials into manmade or natural drainage systems or directly into waters of the state is strictly prohibited.

E. Identification of Underground Sources of Drinking Water and Exempted Aquifers

1. The Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and shall protect as an underground source of drinking water, except where exempted under §3303.E.2 all aquifers or parts of aquifers that meet the definition of an underground source of drinking water. Even if an aquifer has not been specifically identified by the Office of Conservation, it is an underground source of drinking water if it meets the definition.

2. After notice and opportunity for a public hearing, the Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts thereof that the Office of Conservation

proposes to denote as exempted aquifers if they meet the following criteria:

a. the aquifer does not currently serve as a source of drinking water; and

b. the aquifer cannot now and shall not in the future serve as a source of drinking water because:

i. it is mineral, hydrocarbon, or geothermal energy producing or can be demonstrated to contain minerals or hydrocarbons that when considering their quantity and location are expected to be commercially producible;

ii. it is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical;

iii. it is so contaminated that it would be economically or technologically impractical to render said water fit for human consumption; or

iv. it is located in an area subject to severe subsidence or catastrophic collapse; or

c. the total dissolved solids content of the groundwater is more than 3,000 mg/l and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

F. Exceptions/Variations/Alternative Means of Compliance

1. Except where noted in specific provisions of these rules and regulations, the Office of Conservation may allow, on a case-by-case basis, exceptions or variances to these rules and regulations. It shall be the obligation of the applicant, owner, or operator to show that the requested exception or variance and any associated mitigating measures shall not result in an unacceptable increase of endangerment to the environment, or the health, safety and welfare of the public. The applicant, owner, or operator shall submit a written request to the Office of Conservation detailing the reason for the requested exception or variance. No deviation from the requirements of these rules or regulations shall be undertaken by the applicant, owner, or operator without prior written authorization from the Office of Conservation.

a. When injection does not occur into, through, or above an underground source of drinking water, the commissioner may authorize a Class III well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required in this Subpart to the extent that the reduction in requirements will not result in an increased risk of movements of fluids into an underground source of drinking water.

b. When reducing requirements under this Section the commissioner shall issue an order explaining the reasons for the action.

2. Granting of exceptions or variances to these rules and regulations shall only be considered upon proper showing by the applicant, owner, or operator at a public hearing that such exception or variance is reasonable, justified by the particular circumstances, and consistent with the intent of these rules and regulations regarding physical and environmental safety and the prevention of waste. The requester of the exception or variance shall be responsible for all costs associated with a public hearing.

3. Solution-mining caverns in existence as of the effective date of these rules or solution-mining wells and/or

caverns with approved applications containing information submitted pursuant to Subsection 3307.F may operate in accordance with alternative means of compliance approved by the Commissioner of Conservation. Alternative means of compliance shall mean operations that are capable of demonstrating a level of performance, which meets or exceeds the standards contemplated by these regulations. Owners or operators of caverns existing at the time of these rules may submit alternative means of compliance to be approved by the Commissioner of Conservation. The commissioner may review and approve upon finding that the alternative means of compliance meet, ensure, and comply with the purpose of the rules and regulations set forth herein provided the proposed alternative means of compliance ensures comparable or greater safety of personnel and property, protection of the environment and public, quality of operations and maintenance, and protection of the USDW.

G. Additional Requirements. The commissioner may prescribe additional requirements for Class III wells or projects in order to protect USDWs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3305. Permit Requirements

A. Applicability. No person shall construct, convert, or operate a solution-mining well without first obtaining written authorization (permit) from the Office of Conservation.

B. Application Required. Applicants for a solution-mining well, permittees with expiring permits, or any person required to have a permit shall complete, sign, and submit one original application form with required attachments and documentation and an electronic copy of the same to the Office of Conservation. The commissioner may request additional paper copies of the application if it is determined that they are necessary. The complete application shall contain all information necessary to show compliance with applicable state laws and these regulations.

C. Who Applies. It is the duty of the owner or proposed owner of a facility or activity to submit a permit application and obtain a permit. When a facility or activity is owned by one person and operated by another, it is the duty of the operator to file and obtain a permit.

D. Signature Requirements. All permit applications shall be signed as follows.

1. Corporations. By a principal executive officer of at least the level of vice-president, or duly authorized representative of that person if the representative performs similar policy making functions for the corporation. A person is a duly authorized representative only if:

a. the authorization is made in writing by a principle executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or position having responsibility for the overall operation of a solution-mining well, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

2. Limited Liability Company (LLC). By a member if the LLC is member-managed, by a manager if the LLC is manager-managed, or by a duly authorized representative only if:

a. the authorization is made in writing by an individual who would otherwise have signature authority as outlined in §3305.D.2 above;

b. the authorization specifies either an individual or position having responsibility for the overall operation of a solution-mining well, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

3. Partnership or Sole Proprietorship. By a general partner or proprietor, respectively; or

4. Public Agency. By either a principal executive officer or a ranking elected official of a municipality, state, federal, or other public agency.

E. Signature Reauthorization. If an authorization under §3305.D is no longer accurate because a different individual or position has responsibility for the overall operation of a solution-mining well, a new authorization satisfying the signature requirements must be submitted to the Office of Conservation before or concurrent with any reports, information, or applications required to be signed by an authorized representative.

F. Certification. Any person signing a document under §3305.D shall make the following certification on the application:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3307. Application Content

A. The following minimum information required in §3307 shall be submitted in a permit application for a solution-mining well. The applicant shall also refer to the appropriate application form for any additional information that may be required.

B. Administrative Information:

1. all required state application form(s);
2. the nonrefundable application fee(s) as per LAC 43:XIX.Chapter 7 or successor document;
3. the name and mailing address of the applicant and the physical address of the solution-mining well facility;
4. the operator's name, address, telephone number, and e-mail address;
5. ownership status as federal, state, private, public, or other entity;

6. a brief description of the nature of the business associated with the activity;

7. the activity or activities conducted by the applicant which require the applicant to obtain a permit under these regulations;

8. up to four SIC Codes which best reflect the principal products or services provided by the facility;

9. a listing of all permits or construction approvals that the applicant has received or applied for under any of the following programs and which specifically affect the legal or technical ability of the applicant to undertake the activity or activities to be conducted by the applicant under the permit being sought:

a. the Louisiana Hazardous Waste Management Program;

b. this or any other Underground Injection Control Program under the Clean Air Act;

c. NPDES Program under the Clean Water Act;

d. Prevention of Significant Deterioration (PSD) Program under the Clean Air Act;

e. Nonattainment Program under the Clean Air Act;

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. Ocean Dumping Permit under the Marine Protection Research and Sanctuaries Act;

h. dredge or fill permits under Section 404 of the Clean Water Act; and

i. other relevant environmental permits including, but not limited to any state permits issued under the Louisiana Coastal Resources Program, the Louisiana Surface Mining Program or the Louisiana Natural and Scenic Streams System;

10. acknowledgment as to whether the facility is located on Indian lands or other lands under the jurisdiction or protection of the federal government, or whether the facility is located on state water bottoms or other lands owned by or under the jurisdiction or protection of the state of Louisiana;

11. documentation of financial responsibility or documentation of the method by which proof of financial responsibility will be provided as required in §3309.B. Before making a final permit decision, final (official) documentation of financial responsibility must be submitted to and approved by the Office of Conservation;

12. names and addresses of all property owners within the area of review of the solution-mined cavern.

C. Maps and Related Information

1. a location plat of the solution-mining well prepared and certified by a registered civil engineer or registered land surveyor. The location plat shall be prepared according to standards of the Office of Conservation;

2. a topographic or other map extending at least one mile beyond the property boundaries of the facility in which the solution-mining well is located depicting the facility and each well where fluids are injected underground, and those wells, springs, or surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;

3. the section, township and range of the area in which the solution-mining well is located and any parish, city or municipality boundary lines within one mile of the facility location;

4. a map showing the solution-mining well for which the permit is sought, the project area or property boundaries of the facility in which the solution-mining well is located, and the applicable area of review. Within the area of review, the map shall show the number, name, and location of all existing producing wells, injection wells, abandoned wells and dry holes, public water systems and water wells. The map shall also show surface bodies of water, mines (surface and subsurface), quarries, and other pertinent surface features including residences and roads, and faults if known or projected. Only information of public record and pertinent information known to the applicant is required to be included on this map;

5. maps and cross-sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

6. generalized maps and cross-sections illustrating the regional geologic setting;

7. structure contour mapping of the salt stock on a scale no smaller than 1 inch to 500 feet;

8. maps and vertical cross-sections detailing the geologic structure of the local area. The cross-sections shall be structural (as opposed to stratigraphic cross-sections), be referenced to sea level, show the solution-mining well and the cavern being permitted, all surrounding salt caverns regardless of use and current status, conventional (room and pillar) mines, and all other bore holes and wells that penetrate the salt stock. Cross-sections should be oriented to indicate the closest approach to surrounding caverns, bore holes, wells, periphery of the salt stock, etc., and shall extend at least one mile beyond the edge of the salt stock unless the edge of the salt stock and any existing oil and gas production can be demonstrated in a shorter distance and is administratively approved by the Office of Conservation. Salt caverns shall be depicted on the cross sections using data from the most recent salt cavern sonar. Known faulting in the area shall be illustrated on the cross sections such that the displacement of subsurface formations is accurately depicted;

9. sufficient information, including data and maps, to enable the Office of Conservation to identify oil and gas activity in the vicinity of the salt dome, and any potential effects upon the proposed well; and

10. any other information required by the Office of Conservation to evaluate the solution-mining well, cavern, project, and related surface facility.

D. Area of Review Information. Refer to §3313.E for area of review boundaries and exceptions. Only information of public record or otherwise known to the applicant need be researched or submitted with the application, however, a diligent effort must be made to identify all wells and other manmade structures that penetrate the salt stock in response to the area of review requirements. The applicant shall provide the following information on all wells or structures within the defined area of review:

1. a discussion of the protocol used by the applicant to identify wells and manmade structures that penetrate the salt stock in the defined area of review;

2. a tabular listing of all known water wells in the area of review to include the name of the operator, well location, well depth, well use (domestic, irrigation, public, etc.), and current well status (active, abandoned, etc.);

3. a tabular listing of all known wells (excluding water wells) in the area of review with penetrations into the cap rock or salt stock to include at a minimum:

a. operator name, well name and number, state serial number (if assigned), and well location;

b. well type and current well status (producing, disposal, storage, solution-mining, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

c. well depth, construction, completion (including completion depths), plug and abandonment data; and

d. any additional information the commissioner may require.

4. the following information shall be provided on manmade structures within the salt stock regardless of use, depth of penetration, or distance to the solution-mining well or cavern being the subject of the application:

a. a tabular listing of all caverns to include:

i. operator name, well name and number, state serial number, and well location;

ii. current or previous use of the cavern (waste disposal, hydrocarbon storage, solution-mining), current status of the cavern (active, shut-in, plugged and abandoned), date the solution-mining well was drilled, and the date the current solution-mining well status was assigned;

iii. cavern depth, construction, completion (including completion depths), plug and abandonment data;

b. a tabular listing of all conventional (dry or room and pillar) mining activities, whether active or abandoned. The listing shall include the following minimum items:

i. owner or operator name and address;

ii. current mine status (active, abandoned);

iii. depth and boundaries of mined levels; and

iv. the closest distance of the mine in any direction to the solution-mining well and cavern.

E. Technical Information. The applicant shall submit, as an attachment to the application form, the following minimum information in technical report format:

1. for existing caverns the results of a current cavern sonar survey and mechanical integrity pressure and leak tests;

2. corrective action plan required by §3313.F for wells or other manmade structures within the area of review that penetrate the salt stock but are not properly constructed, completed or plugged and abandoned;

3. plans for performing the geological and hydrogeological studies of §3313.B, C, and D. If such studies have already been done, submit the results obtained along with an interpretation of the results;

4. properly labeled schematic of the surface construction details of the solution-mining well to include the wellhead, gauges, flowlines, and any other pertinent details;

5. properly labeled schematic of the subsurface construction and completion details of the solution-mining well and cavern, if applicable, to include borehole diameters (bit size or calipered); all cemented casings with cement

specifications, casing specifications (size, depths, etc.); all hanging strings showing sizes and depths set; total depth of well; top, bottom, and diameter of cavern; and any other pertinent details;

6. surface site diagram(s) of the facility in which the solution-mining well is located including but not limited to surface pumps, piping and instrumentation, controlled access roads, fenced boundaries, field offices, monitoring and safety equipment and location of such equipment, required curbed or other retaining wall heights would any of this be required, etc.;

7. a proposed formation testing program to obtain the information required below:

a. where the injection zone is a water bearing formation, the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

i. fluid pressure;

ii. fracture pressure; and

iii. physical and chemical characteristics of the formation fluids.

b. where the injection formation is not a water bearing formation, the information in §3307.E.7.a.ii;

8. a proposed stimulation program, if applicable;

9. proposed injection and withdrawal procedures;

10. expected changes in pressure, native fluid displacement, and direction of movement of injection fluid;

11. detailed plans and procedures to operate the solution-mining well, cavern, and related surface facilities in accordance with the following requirements:

a. for new wells, the following minimum proposed operating data should also be provided. If the information is proprietary an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the commissioner as part of any enforcement investigation;

i. average and maximum daily rate and volume of fluid to be injected;

ii. average and maximum injection pressure; and

iii. qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request confidentiality.

b. the cavern and surface facility design requirements of §3315, including, but not limited to cavern spacing requirements and cavern coalescence;

c. the well construction and completion requirements of §3317, including, but not limited to open borehole surveys, casing and cementing, casing and casing seat tests, cased borehole surveys, hanging strings, and wellhead components and related connections;

d. the operating requirements of §3319, including, but not limited to cavern roof restrictions, blanket material, remedial work, well recompletion, multiple well caverns, cavern allowable operating pressure and rates, and extracted cavern fluid management.

e. the safety requirements of §3321, including, but not limited to an emergency action plan, controlled site access, facility identification, personnel, wellhead protection and identification, valves and flowlines, alarm systems, emergency shutdown valves, systems test and inspections,

and surface facility retaining walls and spill containment, as well as contingency plans to cope with all shut-ins or well failures to prevent the migration of contaminating fluids into underground sources of drinking water;

f. the monitoring requirements of §3323, including, but not limited to equipment requirements such as pressure gauges, pressure sensors and flow sensors, continuous recording instruments, and subsidence monitoring, as well as a description of methods that will be undertaken to monitor cavern growth due to undersaturated fluid injection;

g. the pre-operating requirements of §3325, specifically the submission of a completion report, and the information required therein;

h. the mechanical integrity pressure and leak test requirements of §3327, including, but not limited to frequency of tests, test methods, submission of pressure and leak test results, and notification of test failures;

i. the cavern configuration and capacity measurement procedures of §3329, including, but not limited to sonar caliper surveys, frequency of surveys, and submission of survey results;

j. the requirements for inactive caverns in §3331;

k. the reporting requirements of §3333, including, but not limited to the information required in quarterly operation reports;

l. the record retention requirements of §3335;

m. the closure and post-closure requirements of §3337, including, but not limited to closure plan requirements, notice of intent to close, standards for closure, and post-closure requirements; and

n. any other information pertinent to operation of the solution-mining well, including, but not limited to any waiver for surface siting, monitoring equipment and safety procedures.

F. If an alternative means of compliance has previously been approved by the Commissioner of Conservation within an approved Area Permit, applicants may submit the alternative means of compliance for new applications for wells within the same Area Permit in order to meet the requirements of E.11.d, e, and f of this Section.

G. In accordance with R.S. 44.1 et seq., any information submitted to the Office of Conservation pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application for, or instructions, or in the case of other submissions, by stamping the words "Confidential Business Information" on each page containing such information. If no claim is made at the time of submission, the Office of Conservation may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in R.S. 44.1 et seq. (Public Information).

1. Claims of confidentiality for the following information will be denied:

a. the name and address of any permit applicant or permittee; and

b. information which deals with the existence, absence, or level of contaminants in drinking water or zones other than the approved injection zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3309. Legal Permit Conditions

A. Signatories. All reports required by permit or regulation and other information requested by the Office of Conservation shall be signed as in applications by a person described in §3305.D or §3305.E.

B. Financial Responsibility

1. Closure and Post-Closure. The owner or operator of a solution-mining well shall maintain financial responsibility and the resources to close, plug and abandon and, where necessary, post-closure care of the solution-mining well, cavern, and related facility as prescribed by the Office of Conservation. Evidence of financial responsibility shall be by submission of a surety bond, a letter of credit, certificate of deposit, or other instruments acceptable to the Office of Conservation. The amount of funds available shall be no less than the amount identified in the cost estimate of the closure plan of §3337.A and, if required, post-closure plan of §3337.B. Any financial instrument filed in satisfaction of these financial responsibility requirements shall be issued by and drawn on a bank or other financial institution authorized under state or federal law to operate in the state of Louisiana. In the event that an operator has previously provided financial security pursuant to LAC 43: XVII.3309, such operator shall provide increased financial security if required to remain in compliance with this Section, within 30 days after notice from the commissioner.

2. Renewal of Financial Responsibility. Any approved instrument of financial responsibility coverage shall be renewed yearly. Financial security shall remain in effect until release thereof is granted by the commissioner pursuant to written request by the operator. Such release shall only be granted after plugging and abandonment and associated site restoration is completed and inspection thereof indicates compliance with applicable regulations or upon transfer of such well.

C. Duty to Comply. The operator must comply with all conditions of a permit. Any permit noncompliance is a violation of the act, the permit and these rules and regulations and is grounds for enforcement action, permit termination, revocation and possible reissuance, modification, or denial of any future permit renewal applications if the commissioner determines that such noncompliance endangers underground sources of drinking water. If the commissioner determines that such noncompliance is likely to endanger underground sources of drinking water, it shall be the duty of the operator to prove that continued operation of the solution-mining well shall not endanger the environment, or the health, safety and welfare of the public.

D. Duty to Halt or Reduce Activity. It shall not be a defense for an owner or operator in an enforcement action to claim it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of the permit.

E. Duty to Mitigate. The owner or operator shall take all reasonable steps to minimize or correct any adverse impact on the environment such as the contamination of underground sources of drinking water resulting from a noncompliance with the permit or these rules and regulations.

F. Proper Operation and Maintenance

1. The operator shall always properly operate and maintain all facilities and systems of injection, withdrawal, and control (and related appurtenances) installed or used to achieve compliance with the permit or these rules and regulations. Proper operation and maintenance include effective performance (including well/cavern mechanical integrity), adequate funding, adequate operation, staffing and training, and adequate laboratory process controls including appropriate quality assurance procedures. This provision requires the operation of back-up, auxiliary facilities, or similar systems when necessary to achieve compliance with the conditions of the permit or these rules and regulations.

2. The operator shall address any unauthorized escape, discharge, or release of any material from the solution-mining well, cavern, and related facility, or parts thereof that is in violation of any state or federal permit or which is not incidental to normal operations, with a corrective action plan. The plan shall address the cause, delineate the extent, and determine the overall effects on the environment resulting from the escape, discharge, or release. The Office of Conservation shall require the operator to formulate a plan to remediate the escaped, discharged, or released material if the material is thought to have entered or has the possibility of entering an underground source of drinking water.

3. The operator shall agree to provide the following:

a. Assistance to residents of areas deemed to be at immediate potential risk in the event of a sinkhole developing or other incident that requires an evacuation if the potential risk or evacuation is associated with the operation of the solution-mining well or cavern.

b. Reimbursement to the state or any political subdivision of the state for reasonable and extraordinary costs incurred in responding to or mitigating a disaster or emergency due to a violation of this Subsection or any rule, regulation or order promulgated or issued pursuant to this Subsection. Such costs shall be subject to approval by the director of the Governor's Office of Homeland Security and Emergency Preparedness prior to being submitted to the permittee for reimbursement. Such payments shall not be construed as an admission of responsibility or liability for the emergency or disaster.

4. The Office of Conservation may immediately prohibit further operations if it determines that continued operations at a solution-mining well, cavern, and related facility, or parts thereof, may cause unsafe operating conditions, or endanger the environment, or the health, safety and welfare of the public. The prohibition shall remain in effect until it is determined that continued operations can and shall be conducted safely. It shall be the duty of the operator to prove that continued operation of the solution-mining well, or part thereof, shall not endanger the environment, or the health, safety and welfare of the public.

G. Inspection and Entry. Inspection and entry at a solution-mining well facility by Office of Conservation personnel shall be allowed as prescribed in R.S. of 1950, Title 30, Section 4.

H. Property Rights. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege or servitude.

I. Notification Requirements. The operator shall give written, and where required, verbal notice to the Office of Conservation concerning activities indicated in this Subsection.

1. Any change in the principal officers, management, owner or operator of the solution-mining well shall be reported to the Office of Conservation in writing within 10 days of the change.

2. Planned physical alterations or additions to the solution-mining well, cavern, surface facility or parts thereof that may constitute a modification or amendment of the permit. No mechanical integrity tests, sonar caliper surveys, remedial work, well or cavern abandonment, or any test or work on a well or cavern (excluding an interface survey not associated with a mechanical integrity test) shall be performed without prior authorization from the Office of Conservation. The operator must submit the appropriate work permit request form (Form UIC-17 or subsequent document) for approval.

3. Whenever there has been no injection into a cavern for one year or more the operator shall notify the Office of Conservation in writing within seven days following the three hundred and sixty-fifth day of the cavern becoming inactive (out of service). The notification shall include the date on which the cavern was removed from service, the reason for taking the cavern out of service, and the expected date that the cavern shall be returned to service. See §3331 for additional requirements for inactive caverns.

4. The operator of a new or converted solution-mining well shall not begin mining operations until the Office of Conservation has been notified of the following:

a. well construction or conversion is complete, including submission of a notice of completion, a completion report, and all supporting information (e.g., as-built diagrams, records, sampling and testing results, well and cavern tests, logs, etc.) required in §3325;

b. a representative of the commissioner has inspected the well and/or facility within 10 working days of the notice of completion required in 3309.I.4.a and finds it is in compliance with the conditions of the permit; and

c. the operator has received written approval from the Office of Conservation clearly stating solution-mining operations may begin.

5. Noncompliance or anticipated noncompliance (which may result from any planned changes in the permitted facility or activity) with the permit or applicable regulations including a failed mechanical integrity pressure and leak test of §3327.

6. Permit Transfer. A permit is not transferable to any person except after giving written notice to and receiving written approval from the Office of Conservation clearly stating that the permit has been transferred. This action may require modification or revocation and re-issuance of the permit (see §3311.K) to change the name of the operator and incorporate other requirements as may be necessary, including but not limited to financial responsibility.

7. Compliance Schedules. Report of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule in these regulations shall be submitted to the commissioner no later than 14 days following each schedule date.

8. Twenty-Four Hour Reporting

a. The operator shall report any noncompliance that may endanger the environment, or the health, safety and welfare of the public. Any information pertinent to the noncompliance shall be reported to the Office of Conservation by telephone at (225) 342-5515 within 24 hours from when the operator becomes aware of the circumstances. A written submission shall also be provided within five days from when the operator becomes aware of the circumstances. The written notification shall contain a description of the noncompliance and its cause, the periods of noncompliance including exact times and dates, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

b. The following additional information must also be reported within the 24-hour period:

i. monitoring or other information (including a failed mechanical integrity test of §3327) that suggests the solution-mining operations may cause an endangerment to underground sources of drinking waters, oil, gas, other commercial mineral deposits (excluding the salt), neighboring salt operations of any kind, or movement outside the salt stock or cavern;

ii. any noncompliance with a regulatory or permit condition or malfunction of the injection/withdrawal system (including a failed mechanical integrity test of §3327) that may cause fluid migration into or between underground sources of drinking waters or outside the salt stock or cavern.

9. The operator shall give written notification to the Office of Conservation upon permanent conclusion of solution-mining operations. Notification shall be given within seven days after concluding operations. The notification shall include the date on which mining activities were concluded, the reason for concluding the mining activities, and a plan to meet the minimum requirements as per §3331. See §3337.A.5 for additional requirements to be conducted after concluding mining activities but before closing the solution-mining well or cavern.

10. The operator shall give written notification before abandonment (closure) of the solution-mining well, related surface facility, or in the case of area permits before closure of the project. Abandonment (closure) shall not begin before receiving written authorization from the Office of Conservation.

11. When the operator becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Office of Conservation, the operator shall promptly submit such facts and information.

J. Duration of Permits

1. Authorization to Operate. Authorization by permit to operate a solution-mining well shall be valid for the life of the well, unless suspended, modified, revoked and reissued, or terminated for cause as described in §3311.K. The commissioner may issue, for cause, any permit for a duration that is less than the full allowable term under this Section.

2. Authorization to Drill, Construct, or Convert. Authorization by permit to drill, construct or convert a new solution-mining well shall be valid for two years from the

effective date of the permit. If drilling or conversion is not begun in that time, the permit shall be null and void and the operator must obtain a new permit.

3. Extensions. The operator shall submit to the Office of Conservation a written request for an extension of the time of §3309.J.2; however, the Office of Conservation shall approve the request for one year only for just cause and only if the permitting conditions have not changed. The operator shall have the burden of proving claims of just cause.

K. Compliance Review. The commissioner shall review each issued solution-mining well or area permit at least once every five years to determine whether it should be modified, revoked and reissued, terminated, or if a minor modification needs to be made. Commencement of the permit review process for each facility shall proceed as authorized by the Commissioner of Conservation.

1. As a part of the five-year permit review, the operator shall submit to the Office of Conservation updated maps and cross-sections based upon best available information depicting the locations of its own caverns and proposed caverns in relation to each other, in relation to the periphery of the salt stock, and in relation to other operator's salt caverns (including solution mining caverns, disposal caverns, storage caverns) in the salt stock. Also, refer to §3313 and §3315.

2. As a part of the five-year permit review, the well operator shall review the closure and post-closure plan and associated cost estimates of §3337 to determine if the conditions for closure are still applicable to the actual conditions.

L. Schedules of Compliance. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the act and these regulations.

1. Time for Compliance. Any schedules of compliance under this Section shall require compliance as soon as possible but not later than three years after the effective date of the permit.

2. Interim Dates. Except as provided in §3309.L.2.b, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirements (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

M. Area or Project Permit Authorization

1. The commissioner may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

a. described and identified by location in permit application(s) if they are existing wells, except that the commissioner may accept a single description of wells with substantially the same characteristics;

b. within the same well field, facility site, reservoir, project, or similar unit in the state; and

c. operated by a single owner or operator.

2. Area permits shall specify:

a. the area within which underground injections are authorized; and

b. the requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

3. The area permit may authorize the operator to construct and operate, convert, or plug and abandon wells within the permit area provided:

a. the operator notifies the commissioner at such time as the permit requires;

b. the additional well satisfies the criteria in §3309.M.1 and meets the requirements specified in the permit under §3309.M.2; and

c. the cumulative effects of drilling and operation of additional injection wells are considered by the commissioner during evaluation of the area permit application and are acceptable to the commissioner.

4. If the commissioner determines that any well constructed pursuant to §3309.M.3 does not satisfy any of the requirements of §3309.M.3.a and b, the commissioner may modify the permit under §3311.K.3, terminate under §3311.K.6, or take enforcement action. If the commissioner determines that cumulative effects are unacceptable, the permit may be modified under §3311.K.3.

N. Recordation of Notice of Existing Solution-Mining Wells. The owner or operator of a solution-mining well shall record a certified survey plat of the well location in the mortgage and conveyance records of the parish in which the property is located. Such notice shall be recorded no later than six months after the effective date of these rules and the owner or operator shall furnish a date/file stamped copy of the recorded notice to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

O. Additional Conditions. The Office of Conservation may, on a case-by-case basis, impose any additional conditions or requirements as are necessary to protect the environment, the health, safety and welfare of the public, underground sources of drinking waters, oil, gas, or other mineral deposits (excluding the salt), and preserve the integrity of the salt dome.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3311. Permitting Process

A. Applicability. This Section contains procedures for issuing and transferring permits to operate a solution-mining well. Any person required to have a permit shall apply to the Office of Conservation as stipulated in §3305. The Office of Conservation shall not issue a permit before receiving an application form and any required supplemental information showing compliance with these rules and regulations and that is administratively and technically completed to the satisfaction of the Office of Conservation.

B. Notice of Intent to File Application

1. The applicant shall make public notice that a permit application is to be filed with the Office of Conservation. A notice of intent shall be published at least 30 days but not more than 120 days before filing the permit application with the Office of Conservation. The applicant shall publish a new notice of intent if the application is not received by the Office of Conservation within the filing period.

2. The notice shall be published once in the official state journal and the official journal of the parish of the proposed project location. The cost for publishing the notice of intent shall be the responsibility of the applicant and shall contain the following minimum information:

a. name and address of the permit applicant and, if different, the facility to be regulated by the permit;

b. the geographic location of the proposed project;

c. name and address of the regulatory agency to process the permit action where interested persons may obtain information concerning the application or permit action; and

d. a brief description of the business conducted at the facility or activity described in the permit application.

3. The applicant shall submit the proof of publication of the notice of intent before the application will be deemed complete.

C. Application Submission and Review

1. The applicant shall complete, sign, and submit one original application form, with required attachments and documentation, and an electronic copy of the same to the Office of Conservation. The commissioner may request additional paper copies of the application if it is determined that they are necessary. The complete application shall contain all information to show compliance with applicable state laws and these rules and regulations.

2. The applicant shall be notified if a representative of the Office of Conservation decides that a site visit is necessary for any reason in conjunction with the processing of the application. Notification may be either oral or written and shall state the reason for the visit.

3. If the Office of Conservation deems an application to be incomplete, deficient of information, or requires additional data, a notice of application deficiency indicating the information necessary to make the application complete shall be transmitted to the applicant.

4. The Office of Conservation shall deny an application if an applicant fails, refuses, is unable to respond adequately to the notice of application deficiency, or if the Office of Conservation determines that the proposed activity cannot be conducted safely. The Office of Conservation shall notify the applicant by certified mail of the decision denying the application.

D. Public Hearing Requirements. A public hearing may be requested for new applications and shall not be scheduled until administrative and technical review of an application has been completed to the satisfaction of the Office of Conservation.

1. Public Notice of Permit Actions

a. Upon acceptance of a permit application as complete and meeting the administrative and technical requirements of these rules and regulations, the commissioner shall give public notice that the following actions have occurred:

i. a draft permit has been prepared under §3311.E; and

ii. a hearing has been scheduled under §3311.D.

b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under §3311.K.

2. Notice by Applicant

a. Public notice of a hearing shall be published by the Office of Conservation in the legal ad section of the official state journal and the official journal of the parish of the proposed project location not less than 30 days before the scheduled hearing.

b. The applicant shall file at least one copy of the complete permit application with the local governing authority of the parish of the proposed project location at least 30 days before the scheduled public hearing to be available for public review.

c. One additional copy of the complete permit application shall be filed by the applicant in a public library in the parish of the proposed project location.

3. Contents. Public notices shall contain the following minimum information:

a. name and address of the permit applicant and, if different, the facility or activity regulated by the permit;

b. name and address of the regulatory agency processing the permit action;

c. name, address, and phone number of a person within the regulatory agency where interested persons may obtain information concerning the application or permit action;

d. a brief description of the business conducted at the facility or activity described in the permit application;

e. a statement that a draft permit has been prepared under §3311.E;

f. a brief description of the public comment procedures;

g. a brief statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

h. the time, place, and a brief description of the nature and purpose of the public hearing, if one has already been scheduled;

i. a reference to the date of any previous public notices relating to the permit;

j. any additional information considered necessary or proper by the commissioner.

E. Draft Permit

1. Once an application is complete, the Office of Conservation shall prepare a draft permit (Order) or deny the application. Draft permits shall be accompanied by a fact sheet, be publicly noticed, and made available for public comment.

2. The applicant may appeal the decision to deny the application in a letter to the commissioner who may then call a public hearing through §3311.D.

3. If the commissioner prepares a draft permit, it shall contain the following information where appropriate:

a. all conditions under §3307 and §3309;

b. all compliance schedules under §3309.L; and

c. all monitoring requirements under applicable Paragraphs in §3323.

F. Fact Sheet. The Office of Conservation shall prepare a fact sheet for every draft permit. It shall briefly set forth principal facts and significant factual, legal, and policy questions considered in preparing the draft permit.

1. The fact sheet may include:

a. a brief description of the type of facility or activity that is the subject of the draft permit or application;

b. the type and proposed quantity of material to be injected;

c. a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provision;

d. a description of the procedures for reaching a final decision on the draft permit or application including the beginning and ending date of the public comment period of §3311.H, the address where comments shall be received, and any other procedures whereby the public may participate in the final decision. The public notice shall allow 30 days for public comment;

e. reasons why any requested variances or alternative to required standards do or do not appear justified;

f. procedures for requesting a hearing and the nature of that hearing; and

g. the name and telephone number of a person within the permitting agency to contact for additional information.

2. The fact sheet shall be distributed to the permit applicant, all persons identified in §3311.G.2, and, on request, to any interested person.

G. Public Hearing

1. If a public hearing has been requested, the Office of Conservation shall fix a time, date, and location for a public hearing. The public hearing shall be held in the parish of the proposed project location. The cost of the public hearing shall be set by LAC 43:XIX.Chapter 7 (Fees, as amended) and is the responsibility of the applicant.

2. The Office of Conservation shall provide notice of a scheduled hearing by forwarding a copy of the notice to the applicant, property owners immediately adjacent to the proposed project, operators of existing projects located on or within the salt stock of the proposed project; United States Environmental Protection Agency; Louisiana Department of Wildlife and Fisheries; Louisiana Department of Environmental Quality; Louisiana Office of Coastal Management; Louisiana Office of Conservation, Pipeline Division, Louisiana Department of Culture, Recreation and Tourism, Division of Archaeology; the governing authority for the parish of the proposed project; and any other interested parties.

3. The public hearing shall be fact finding in nature and not subject to the procedural requirements of the Louisiana Administrative Procedure Act. All public hearings shall be publicly noticed as required by these rules and regulations.

4. At the hearing, any person may make oral statements or submit written statements and data concerning the application or permit action being the basis of the hearing. Reasonable limits may be set upon the time allowed for oral statements; therefore, submission of written statements may be required. The hearing officer may extend

the comment period by so stating before the close of the hearing.

5. A transcript shall be made of the hearing and such transcript shall be available for public review.

H. Public Comments, Response to Comments, and Permit Issuance

1. Any interested person may submit written comments concerning the permitting activity during the public comment period. All comments pertinent and significant to the permitting activity shall be considered in making the final permit decision.

2. The Office of Conservation shall issue a response to all pertinent and significant comments as an attachment to and at the time of the final permit decision. The final permit with response to comments shall be made available to the public. The response shall:

a. specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

b. briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

3. The Office of Conservation may issue a final permit decision within 30 days following the close of the public comment period; however, this time may be extended due to the nature, complexity, and volume of public comments received.

4. A final permit decision shall be effective on the date of issuance.

5. The owner or operator of a solution-mined cavern shall record a certified survey plat and final permit in the mortgage and conveyance records of the parish in which the property is located. A date/file stamped copy of the plat and final permit is to be furnished to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

6. Approval or the granting of a permit to construct or convert a solution-mining well shall be valid for a period of two years and if not begun in that time, the permit shall be null and void. The permittee may request an extension of this two year requirement; however, the commissioner shall approve the request for one year only for extenuating circumstances and only if the conditions existing at the time the permit was issued have not changed. The permittee shall have the burden of proving claims of extenuating circumstances.

I. Permit Application Denial

1. The Office of Conservation may refuse to issue, reissue, or reinstate a permit or authorization if an applicant or operator has delinquent, finally determined violations of the Office of Conservation or unpaid penalties or fees, or if a history of past violations demonstrates the applicant's or operator's unwillingness to comply with permit or regulatory requirements.

2. If a permit application is denied, the applicant may request a review of the Office of Conservation's decision to deny the permit application. Such request shall be made in

writing and shall contain facts or reasons supporting the request for review.

3. Grounds for permit application denial review shall be limited to the following reasons:

a. the decision is contrary to the laws of the state, applicable regulations, or evidence presented in or as a supplement to the permit application;

b. the applicant has discovered since the permit application public hearing or permit denial, evidence important to the issues that the applicant could not with due diligence have obtained before or during the initial permit application review;

c. there is a showing that issues not previously considered should be examined so as to dispose of the matter; or

d. there is other good ground for further consideration of the issues and evidence in the public interest.

J. Permit Transfer

1. Applicability. A permit may be transferred to a new owner or operator only upon written approval from the Office of Conservation. Written approval must clearly read that the permit has been transferred. It is a violation of these rules and regulations to operate a solution-mining well without a permit or other authorization if a person attempting to acquire a permit transfer allows operation of the solution-mining well before receiving written approval from the Office of Conservation.

2. Procedures

a. The proposed new owner or operator must apply for and receive an operator code by submitting a completed Organization Report (Form OR-1), or subsequent form, to the Office of Conservation.

b. The current operator shall submit an application for permit transfer at least 30 days before the proposed permit transfer date. The application shall contain the following:

i. name and address of the proposed new owner or operator;

ii. date of proposed permit transfer; and

iii. a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, financial responsibility, and liability between them.

c. If no agreement described in §3311.J.2.b.iii above is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation will shift from the existing operator to the new operator on the date the transfer is approved.

d. The new operator shall submit an application for a change of operator using Form MD-10-R-A, or subsequent form, to the Office of Conservation containing the signatories of §3305.D and E along with the appropriate filing fee.

e. The new operator shall submit evidence of financial responsibility under §3309.B.

f. If a person attempting to acquire a permit causes or allows operation of the facility before approval by the commissioner, it shall be considered a violation of these rules for operating without a permit or other authorization.

g. If the commissioner does not notify the existing operator and the proposed new owner or operator of his

intent to modify or revoke and reissue the permit under §3309.K.3.b the transfer is effective on the date specified in the agreement mentioned in §3311.J.2.b.iii.

h. Any additional information as may be required to be submitted by these regulations or the Office of Conservation.

K. Permit Suspension, Modification, Revocation and Reissuance, Termination. This subsection sets forth the standards and requirements for applications and actions concerning suspension, modification, revocation and reissuance, termination, and renewal of permits. A draft permit must be prepared and other applicable procedures must be followed if a permit modification satisfies the criteria of this subsection. A draft permit, public notification, or public participation is not required for minor permit modifications defined in §3311.K.6.

1. Permit Actions

a. The permit may be suspended, modified, revoked and reissued, or terminated for cause.

b. The operator shall furnish the Office of Conservation within 30 days any information that the Office of Conservation may request to determine whether cause exists for suspending, modifying, revoking and reissuing, or terminating a permit, or to determine compliance with the permit. Upon request, the operator shall furnish the Office of Conservation with copies of records required to be kept by the permit.

c. The Office of Conservation may, upon its own initiative or at the request of any interested person, review any permit to determine if cause exists to suspend, modify, revoke and reissue, or terminate the permit for the reasons specified in §3311.K.2, 3, 4, 5, and 6. All requests shall be in writing and shall contain facts or reasons supporting the request.

d. If the Office of Conservation decides the request is not justified, the person making the request shall be sent a brief written response giving a reason for the decision. Denials of requests for suspension, modification, revocation and reissuance, or termination are not subject to public notice, public comment, or public hearings.

e. If the Office of Conservation decides to suspend, modify, or revoke and reissue a permit under §3311.K.2, 3, 4, 5, and 6, additional information may be requested and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Office of Conservation shall require the submission of a new application.

f. The suitability of an existing solution-mining well location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate continued operation at the site endangers the environment, or the health, safety and welfare of the public which was unknown at the time of permit issuance. If the solution-mining well location is no longer suitable for its intended purpose, it shall be closed according to applicable sections of these rules and regulations.

2. Suspension of Permit. The Office of Conservation may suspend the operator's right to solution-mine until violations are corrected. If violations are corrected, the Office of Conservation may lift the suspension. Suspension of a permit and/or subsequent corrections of the causes for

the suspension by the operator shall not preclude the Office of Conservation from terminating the permit, if necessary. The Office of Conservation shall issue a Notice of Violation (NOV) to the operator of violations of the permit or these regulations that list the specific violations. If the operator fails to comply with the NOV by correcting the cited violations within the date specified in the NOV, the Office of Conservation shall issue a Compliance Order requiring the violations to be corrected within a specified time and may include an assessment of civil penalties. If the operator fails to take corrective action within the time specified in the Compliance Order, the Office of Conservation shall assess a civil penalty, and shall suspend, revoke, or terminate the permit.

3. Modification or Revocation and Reissuance of Permits. The following are causes for modification and may be causes for revocation and reissuance of permits.

a. Alterations. There are materials and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

b. Information. The Office of Conservation has received information pertinent to the permit. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. Cause shall include any information indicating that cumulative effects on the environment, or the health, safety and welfare of the public are unacceptable.

c. New Regulations

i. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued and conformance with the changed standards or regulations is necessary for the protection of the environment, or the health, safety and welfare of the public. Permits may be modified during their terms when:

(a) the permit condition to be modified was based on a promulgated regulation or guideline;

(b) there has been a revision, withdrawal, or modification of that portion of the regulation or guideline on which the permit condition was based; or

(c) an operator requests modification within 90 days after *Louisiana Register* notice of the action on which the request is based.

ii. The permit may be modified as a minor modification without providing for public comment when standards or regulations on which the permit was based have been changed by withdrawal of standards or regulations or by promulgation of amended standards or regulations which impose less stringent requirements on the permitted activity or facility and the operator requests to have permit conditions based on the withdrawn or revised standards or regulations deleted from his permit.

iii. For judicial decisions, a court of competent jurisdiction has remanded and stayed Office of Conservation regulations or guidelines and all appeals have been exhausted, if the remand and stay concern that portion of the

regulations or guidelines on which the permit condition was based and a request is filed by the operator to have permit conditions based on the remanded or stayed standards or regulations deleted from his permit.

d. Compliance Schedules. The Office of Conservation determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the operator has little or no control and for which there is no reasonable available remedy.

4. Causes for Modification or Revocation and Reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit.

a. Cause exists for termination under §3311.K.7, and the Office of Conservation determines that modification or revocation and reissuance is appropriate.

b. The Office of Conservation has received notification of a proposed transfer of the permit and the transfer is determined not to be a minor permit modification. A permit may be modified to reflect a transfer after the effective date (3311.J.2.b.ii) but will not be revoked and reissued after the effective date except upon the request of the new operator.

5. Facility Siting. Suitability of an existing facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that continued operations at the site pose a threat to the health or safety of persons or the environment which was unknown at the time of the permit issuance. A change of injection site or facility location may require modification or revocation and issuance as determined to be appropriate by the commissioner.

6. Minor Modifications of Permits. The Office of Conservation may modify a permit to make corrections or allowances for changes in the permitted activity listed in this subsection without issuing a draft permit and providing for public participation. Minor modifications may only:

a. correct administrative or make informational changes;

b. correct typographical errors;

c. amend the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities;

d. change an interim compliance date in a schedule of compliance, provided the new date does not interfere with attainment of the final compliance date requirement;

e. allow for a change in ownership or operational control of a solution-mining well where the Office of Conservation determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Office of Conservation (see 3311.J);

f. change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the commissioner, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification;

g. change construction requirements or plans approved by the Office of Conservation provided that any such alteration is in compliance with these rules and

regulations. No such changes may be physically incorporated into construction of the solution-mining well, cavern, or surface facility before written approval from the Office of Conservation; or

h. amend a closure or post-closure plan.

7. Termination of Permits

a. The Office of Conservation may terminate a permit during its term for the following causes:

i. noncompliance by the operator with any condition of the permit;

ii. the operator's failure in the application or during the permit issuance process to fully disclose all relevant facts, or the operator's misrepresentation of any relevant facts at any time; or

iii. a determination that continued operation of the permitted activity cannot be conducted in a way that is protective of the environment, or the health, safety and welfare of the public.

b. If the Office of Conservation decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under §3311.E. The Office of Conservation may alternatively decide to modify or revoke and reissue a permit for the causes in §3311.K.7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3313. Site Assessment

A. Applicability. This Section applies to all applicants, owners or operators of solution-mining wells. The applicant, owner or operator shall be responsible for showing that the solution-mining operation shall be accomplished using good engineering and geologic practices for solution-mining operations to preserve the integrity of the salt stock and overlying sediments. In addition to all applicants showing this in their application, as part of the compliance review found in subsection 3309.K, the commissioner may require any owner or operator of a solution-mining well to provide the same or similar information required in this Section. This shall include, but not be limited to:

1. an assessment of the engineering, geological, geomechanical, geochemical, and geophysical properties of the salt stock;

2. stability of salt stock and overlying and surrounding sediments;

3. stability of the cavern design (particularly regarding its size, shape, depth, and operating parameters);

4. the amount of separation between the cavern of interest and adjacent caverns and structures within the salt stock;

5. the amount of separation between the outermost cavern wall and the periphery of the salt stock; and

6. an assessment of well information and oil and gas activity within the vicinity of the salt dome.

B. Geological Studies and Evaluations. The applicant, owner, or operator shall do a thorough geological, geophysical, geomechanical, and geochemical evaluation of the salt stock to determine its suitability for solution-mining, stability of the cavern under the proposed set of operating conditions, and where applicable, the structural integrity of the salt stock between an adjacent cavern and

salt periphery under the proposed set of operating conditions. A listing of data or information used to characterize the structure and geometry of the salt stock shall be included.

1. Where applicable, the geologic evaluation shall include, but should not be limited to:

- a. geologic mapping of the structure of the salt stock and any cap rock;
- b. geologic history of salt movement;
- c. an assessment of the impact of possible anomalous zones (salt spines, shear planes, etc.) on the solution-mining well or cavern;
- d. deformation of the cap rock and strata overlying the salt stock;
- e. investigation of the upper salt surface and adjacent areas involved with salt dissolution;
- f. cap rock formation and any non-vertical salt movement.

2. The applicant shall perform a thorough hydrogeological study on strata overlying the salt stock to determine the occurrence of the lowermost underground source of drinking water immediately above and in the vicinity of the salt stock.

3. The applicant shall investigate regional tectonic activity and the potential impact (including ground subsidence) of the project on surface and subsurface resources.

4. The proximity of all existing and proposed solution-mining caverns to the periphery of the salt stock and to manmade structures within the salt stock shall be demonstrated to the Office of Conservation at least once every five years by providing the following:

- a. an updated structure contour map of the salt stock on a scale no smaller than 1 inch to 500 feet. The updated map should make use of all available data. The horizontal configuration of the salt caverns should be shown on the structure map and reflect the caverns' maximum lateral extent as determined by the most recent sonar caliper surveys; and
- b. vertical cross sections of the salt caverns showing their outline and position within the salt stock. Cross sections should be oriented to indicate the closest approach of the salt cavern wall to the periphery of the salt stock. The outline of the salt cavern should be based on the most recent sonar caliper survey.

C. Core Sampling

1. At least one well at the site of the solution-mining well (or the salt dome) shall be or shall have been cored over sufficient depth intervals to yield representative samples of the subsurface geologic environment. This shall include coring of the salt stock and may include coring of overlying formations, including any cap rock. Cores should be obtained using the whole core method. Core acquisition, core handling, and core preservation shall be done according to standard field sampling practices considered acceptable for laboratory tests of recovered cores.

2. Data from previous coring projects may be used instead of actual core sampling provided the data is specific to the salt dome of interest. If site-specific data is unavailable, data may be obtained from sources that are not specific to the area as long as the data can be shown to closely approximate the properties of the salt dome of

interest. It shall be the responsibility of the applicant to make a satisfactory demonstration that data obtained from other sources are applicable to the salt dome of interest.

D. Core Analyses and Laboratory Tests. Analyses and tests shall consider the characteristics of the injected materials and should provide data on the salt's geomechanical, geophysical, geochemical, mineralogical properties, microstructure, and where necessary, potential for adjacent cavern connectivity, with emphasis on cavern shape and the operating conditions. All laboratory tests, experimentation, and numeric modeling shall be conducted using methods that simulate the proposed operating conditions of the cavern. Test methods shall be selected to define the deformation and strength properties and characteristics of the salt stock under cavern operating conditions.

E. Area of Review. A thorough evaluation shall be undertaken of both surface and subsurface activities in the defined area of review of the individual solution-mining well or project area that may influence the integrity of the salt stock, solution-mining well, and cavern, or contribute to the movement of injected fluids outside the cavern, wellbore, or salt stock.

1. Surface Delineation. The area of review for an individual solution-mining well shall be a fixed radius around the wellbore of not less than 1320 feet. The area of review for wells in a solution-mining project, shall be the project area plus a circumscribing area the width of which is not less than 1320 feet. Exception shall be noted as shown in §3313.E.2.c and d below.

2. Subsurface Delineation. At a minimum, the following shall be identified within the area of review:

- a. all known active, inactive, and abandoned wells within the area of review with known depth of penetration into the cap rock or salt stock;
- b. all known water wells within the area of review;
- c. all caverns within the salt stock regardless of usage, depth of penetration, or distance to the proposed solution-mining well or cavern;
- d. all conventional (dry or room and pillar) mining activity either active or abandoned occurring anywhere within the salt stock regardless of distance to the proposed solution-mining well or cavern.
- e. all producing formations either active or depleted occurring anywhere within the vicinity of the salt dome.

F. Corrective Action

1. For manmade structures that penetrate the salt stock identified in the area of review that are not properly constructed, completed, or plugged and abandoned, the applicant shall submit a corrective action plan consisting of such steps, procedures, or modifications as are necessary to prevent the movement of fluids outside the cavern or into underground sources of drinking water.

a. Where the plan is adequate, the provisions of the corrective action plan shall be incorporated into the permit as a condition.

b. Where the plan is inadequate, the Office of Conservation shall require the applicant to revise the plan, or prescribe a plan for corrective action as a condition of the permit, or the application shall be denied.

2. Any permit issued for an existing solution-mining well for which corrective action is required shall include a

schedule of compliance for complete fulfillment of the approved corrective action procedures as soon as possible. If the required corrective action is not completed as prescribed in the schedule of compliance, the permit shall be suspended, modified, revoked and possibly reissued, or terminated according to these rules and regulations.

3. No permit shall be issued for a new solution-mining well until all required corrective action obligations have been fulfilled.

4. The commissioner may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not cause the movement of fluids into a underground source of drinking water through any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other corrective action has been taken.

5. When setting corrective action requirements for solution-mining wells, the commissioner shall consider the overall effect of the project on the hydraulic gradient in potentially affected underground sources of drinking water, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary, the monitoring program required in §3323 shall be designed to verify the validity of such determination.

6. In determining the adequacy of corrective action proposed by the applicant under §3313.F above and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the commissioner:

- a. nature and volume of injection fluid;
- b. nature of native fluids or by-products of injection;
- c. potentially affected population;
- d. geology;
- e. hydrology;
- f. history of the injection operation;
- g. completion and plugging records;
- h. abandonment procedures in effect at the time the well was abandoned; and
- i. hydraulic connections with underground sources of drinking water.

7. The Office of Conservation may prescribe additional requirements for corrective action beyond those submitted by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3315. Cavern and Surface Facility Design Requirements

A. This Section provides general standards for design of caverns to assure that project development can be conducted in a reasonable, prudent, and a systematic manner and shall stress physical and environmental safety. The cavern design shall be modified where necessary to conform to good engineering and geologic practices.

B. Cavern Spacing Requirements

1. Property Boundary

a. Existing Solution-Mining Caverns. No part of a solution-mining cavern permitted as of the date these regulations are promulgated shall extend closer than 100 feet to the property of others without consent of the owner(s). Continued operation without this consent of an existing solution mining cavern within 100 feet to the property of others may be allowed as follows.

i. The operator of the cavern shall make a good faith effort to provide notice in a form and manner approved by the commissioner to the adjacent property owner(s) of the location of its cavern.

ii. The commissioner shall hold a public hearing in Baton Rouge if an adjacent owner whose property line is within 100 feet objects to the cavern's continued operation. Following the public hearing the commissioner may approve the cavern's continued operation upon a determination that the continued operation of the cavern has no adverse effects to the property rights of the adjacent property owner(s).

iii. If no objection from an adjacent property owner is received within thirty days of the notice provided in accordance with subparagraph 1(i) above, then the commissioner may approve the continued operation of the cavern administratively.

b. New Solution-Mining Caverns. No part of a newly permitted solution-mining cavern shall extend closer than 100 feet to the property of others without the consent of the owner(s).

2. Adjacent Structures within the Salt. As measured in any direction, the minimum separation between walls of adjacent caverns or between the walls of the cavern and any manmade structure within the salt stock shall not be less than 200 feet. Caverns must be operated in a manner that ensures the walls between any cavern and any other manmade structure maintain the minimum separation of 200 feet. For solution mining caverns permitted prior to the effective date of these regulations and which is already within 200 feet of any other manmade structure within the salt stock, the Commissioner of Conservation may approve continued operation upon a proper showing by the owner or operator that the cavern is capable of continued safe operations.

3. Salt Periphery

a. Without exception or variance to these rules and regulations, at no time shall the minimum separation between the cavern walls at any point and the periphery of the salt stock for a newly permitted solution-mining cavern be less than 300 feet.

b. An existing solution-mining cavern with less than 300 feet of salt separation at any point between the cavern walls and the periphery of the salt stock shall provide the Office of Conservation with an enhanced monitoring plan that has provisions for ongoing monitoring of the structural stability of the cavern and salt through methods that may include, but are not limited to, increased frequency of sonar caliper surveys, vertical seismic profiles, micro-seismic monitoring, increased frequency of subsidence monitoring, mechanical integrity testing, continuous cavern pressure data

monitoring, etc. A combination of enhanced monitoring methods may be proposed where appropriate. Once approved, the owner or operator shall implement the enhanced monitoring plan.

c. Without exception or variance to these rules and regulations, an existing solution-mining cavern with cavern walls 100 feet or less from the periphery of the salt stock shall be removed from service immediately and permanently. An enhanced monitoring plan of Subparagraph b above shall be prepared and submitted to the Office of Conservation. Once approved, the owner or operator shall implement the enhanced monitoring plan.

C. Cavern Coalescence. The Office of Conservation may permit the use of coalesced caverns for solution-mining. It shall be the duty of the applicant, owner or operator to demonstrate that operation of coalesced caverns under the proposed cavern operating conditions can be accomplished in a physical and environmentally safe manner. The intentional subsurface coalescing of adjacent caverns must be requested by the applicant, owner or operator in writing and be approved by the Office of Conservation before beginning or resumption of solution-mining operations. Approval for cavern coalescence shall only be considered upon a showing by the applicant, owner or operator that the stability and integrity of the cavern and salt stock shall not be compromised and that solution-mining operations can be conducted in a physically and environmentally safe manner. If the design of adjacent caverns should include approval for the subsurface coalescing of adjacent caverns, the minimum spacing requirement of §3315.B.2 above shall not apply to the coalesced caverns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3317. Well Construction and Completion

A. General Requirements

1. All materials and equipment used in the construction of the solution-mining well and related appurtenances shall be designed and manufactured to exceed the operating requirements of the specific project. Consideration shall be given to depth and lithology of all subsurface geologic zones, corrosiveness of formation fluids, hole size, anticipated ranges and extremes of operating conditions, subsurface temperatures and pressures, type and grade of cement, and projected life of the solution-mining well.

2. All solution-mining wells and caverns shall be designed, constructed, completed, and operated to prevent the escape of injected materials out of the salt stock, into or between underground sources of drinking water, or otherwise create or cause pollution or endanger the environment or public safety. All phases of design, construction, completion, and testing shall be prepared and supervised by qualified personnel.

a. Where injection is into a formation which contains water with less than 10,000 mg/l TDS, monitoring wells shall be completed into the injection zone and into any underground sources of drinking water above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injected fluids, process by-products, or formation fluids outside the mining area or zone. If the

operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

b. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

c. Where the injection well penetrates an underground source of drinking water in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

d. In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:

i. the population relying on the USDW affected or potentially affected by the injection operation;

ii. the proximity of the injection operation to points of withdrawal of drinking water;

iii. the local geology and hydrology;

iv. the operating pressures and whether a negative pressure gradient is being maintained;

v. the nature and volume of the injected fluid, the formation water, and the process by-products; and

vi. the injection well density.

B. Open Borehole Surveys

1. Open hole wireline surveys that delineate subsurface lithologies, formation tops (including top of cap rock and salt), formation fluids, formation porosity, and fluid resistivities shall be done on wells from total well depth to either ground surface or base of conductor pipe. Wireline surveys shall be presented with gamma-ray and, where applicable, spontaneous potential curves. All surveys shall be presented on a scale of 1 inch to 100 feet and a scale of 5 inches to 100 feet. A descriptive report interpreting the results of such logs and tests shall be prepared and submitted to the commissioner.

2. Gyroscopic multi-shot surveys of the borehole shall be taken at intervals not to exceed every 100 feet of drilled borehole.

3. Where practicable, caliper logging to determine borehole size for cement volume calculations shall be done before running casings.

4. The owner or operator shall submit all wireline surveys as one paper copy and an electronic version in a format approved by the commissioner.

C. Casing and Cementing. Except as specified below, the wellbore of the solution-mining well shall be cased, completed, and cemented according to rules and regulations of the Office of Conservation and good petroleum industry engineering practices for wells of comparable depth that are applicable to the same locality of the cavern. Design considerations for casings and cementing materials and methods shall address the nature and characteristics of the subsurface environment, the nature of injected materials, the range of conditions under which the well, cavern, and facility shall be operated, and the expected life of the well including closure and post-closure.

1. Cementing shall be by the pump-and-plug method or another method approved by the Office of Conservation

and shall be circulated to the surface. Circulation of cement may be done by staging.

a. For purposes of these rules and regulations, circulated (cemented) to the surface shall mean that actual cement returns to the surface were observed during the primary cementing operation. A copy of the cementing company's job summary or cementing ticket indicating returns to the surface shall be submitted as part of the pre-operating requirements of §3325.

b. If returns are lost during cementing, the owner or operator shall have the burden of showing that sufficient cement isolation is present to prevent the upward movement of injected material into zones of porosity or transmissive permeability in the overburden along the wellbore and to protect underground sources of drinking water.

2. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- a. depth to the injection zone;
- b. injection pressure, external pressure, internal pressure, axial loading, etc.;
- c. borehole size;
- d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);
- e. corrosiveness of injected fluids and formation fluids;
- f. lithology of subsurface formations penetrated; and
- g. type and grade of cement.

3. Surface casing shall be set to a depth into a confining bed below the base of the lowermost underground source of drinking water. Surface casing shall be cemented to surface where practicable.

4. Except as otherwise noted in this Chapter all solution-mining wells shall be cased with a minimum of two casings cemented into the salt. The surface casing shall not be considered one of the two casings for purposes of this Subsection.

5. New wells drilled into an existing cavern shall have an intermediate casing and a final cemented casing set into the salt. The final cemented casing shall be set a minimum distance of 300 feet into the salt and shall make use of a sufficient number of casing centralizers.

6. The following applies to wells existing in caverns before the effective date of these rules and regulations and that are being used for solution-mining. If the design of the well or cavern precludes having distinct intermediate and final casing seats cemented into the salt, the wellbore shall be cased with two concentric casings run from the surface of the well to a minimum distance of 300 feet into the salt. The inner casing shall be cemented from its base to surface.

7. The intermediate and final casings shall be cemented from their respective casing seats to the surface when practicable.

8. An owner or operator may propose for approval by the Commissioner of Conservation an alternative casing program for a new solution-mining well pursuant to an exception or variance request in accordance with the requirements of Subsection 3303.F.

D. Casing and Casing Seat Tests. When doing tests under this paragraph, the owner or operator shall monitor and

record the tests by use of a surface readout pressure gauge and a chart or a digital recorder. All instruments shall be properly calibrated and in good working order. If there is a failure of the required tests, the owner or operator shall take necessary corrective action to obtain a passing test.

1. Casing. After cementing each casing, but before drilling out the respective casing shoe, all casings will be hydrostatically pressure tested to verify casing integrity and the absence of leaks. The stabilized test pressure applied at the well surface will be calculated such that the pressure gradient at the depth of the respective casing shoe will not be less than 0.7 PSI/FT of vertical depth or greater than 0.9 PSI/FT of vertical depth. All casing test pressures will be maintained for 1 hour after stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the Pre-Operating Requirements

2. Casing Seat. The casing seat and cement of the intermediate and production casings will each be hydrostatically pressure tested after drilling out the casing shoe. At least 10 feet of formation below the respective casing shoes will be drilled before the test.

a. For all casings below the surface casing—excluding the final cemented casing—the stabilized test pressure applied at the well surface will be calculated such that the pressure at the casing shoe will not be less than the 85 percent of the predicted formation fracture pressure at that depth. The test pressures will be maintained for 1 hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the Pre-Operating Requirements.

b. For the final cemented casing, the test pressure applied at the surface will be the greater of the maximum predicted salt cavern operating pressure or a pressure gradient of 0.85 PSI/FT of vertical depth calculated with respect to the depth of the casing shoe. The test pressures will be maintained for 1 hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the Pre-Operating Requirements. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration.

3. Casing or casing seat test pressures shall never exceed a pressure gradient equivalent to 0.90 PSI per foot of vertical depth at the respective casing seat or exceed the known or calculated fracture gradient of the appropriate subsurface formation. The test pressure shall never exceed the rated burst or collapse pressures of the respective casings.

E. Cased Borehole Surveys. A cement bond with variable density log (or similar cement evaluation tool) and a temperature log shall be run on all casings. The Office of Conservation may consider requests for allowances for wireline logging in large diameter casings or justifiable special conditions. A descriptive report interpreting the results of such logs shall be prepared and submitted to the commissioner.

1. It shall be the duty of the well applicant, owner or operator to prove adequate cement isolation on all cemented casings. Remedial cementing shall be done before proceeding with further well construction, completion, or

conversion if adequate cement isolation between the solution-mining well and other subsurface zones cannot be demonstrated.

2. A casing inspection log (or similar log) shall be run on the final cemented casing.

F. Hanging Strings. Without exception or variance to these rules and regulations, all solution-mining wells shall be completed with at least two hanging strings. One hanging string shall be for injection; the second hanging string shall be for displacing fluid out of the cavern from below the blanket material. However, the commissioner may approve a request for a single hanging string only in the case of dual-bore mining. Hanging strings shall be designed with a collapse, burst, and tensile strength rating conforming to all expected operating conditions, including flow induced vibrations. The design shall also consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the cavern.

G. Wellhead Components and Related Connections. All wellhead components, valves, flanges, fittings, flowlines, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. Selection and design criteria for components shall consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the cavern under the specific range of operating conditions, including flow induced vibrations. The fluid withdrawal side of the wellhead (if applicable) shall be rated for the same pressure as the water injection side. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3319. Operating Requirements

A. Cavern Roof. Without exception or variance to these rules and regulations, no cavern shall be used if the cavern roof has grown above the top of the salt stock. The operation of an already permitted cavern shall cease and shall not be allowed to continue if information becomes available that shows this condition exists. The Office of Conservation may order the solution-mining well and cavern closed according to an approved closure and post-closure plan.

B. Blanket Material. Before beginning solution-mining operations, a blanket material shall be placed into the cavern to prevent unwanted leaching of the cavern roof. The blanket material shall consist of crude oil, diesel, mineral oil, or other fluid possessing similar noncorrosive, nonsoluble, low-density properties. The blanket material shall be placed between the outermost hanging string and innermost cemented casing of the cavern and shall be of sufficient volume to coat the entire cavern roof. In active caverns, the cavern roof and level of the blanket material shall be monitored at least once every five years by running a density interface survey or using an alternative method approved by the Office of Conservation.

C. Remedial Work. No remedial work or repair work of any kind shall be done on the solution-mining well or cavern without prior authorization from the Office of Conservation. The provision for prior authorization shall also extend to doing mechanical integrity pressure and leak tests and sonar

caliper surveys; however, a work permit is not required in order to conduct interface surveys. The owner or operator or its agent shall submit a valid work permit request form (Form UIC-17 or successor). Before beginning well or cavern remedial work, the pressure in the cavern shall be relieved, as practicable.

D. Well Recompletion—Casing Repair. The following applies to solution-mining wells where remedial work results from well upgrade, casing wear, or similar condition. For each paragraph below, a casing inspection log shall be done on the entire length of the innermost cemented casing in the well before doing any casing upgrade or repair. Authorization from the Office of Conservation shall be obtained before beginning any well recompletion, repair, upgrade, or closure. A solution-mining well that cannot be repaired or upgraded shall be properly closed according to §3337.

1. Liner. A liner may be used to recomplete or repair a well with severe casing damage. The liner shall be run from the well surface to the base of the innermost cemented casing. The liner shall be cemented over its entire length and shall be successfully pressure tested.

2. Casing Patch. Internal casing patches shall not be used to repair severely corroded or damaged casing. Casing patches shall only be used for repairing or covering isolated pitting, corrosion, or similar localized damage. The casing patch shall extend a minimum of 10 feet above and below the area being repaired. The entire casing shall be successfully pressure tested.

E. Multiple Well Caverns. No newly permitted well shall be drilled into an existing cavern until the cavern pressure has been relieved, as practicable, to zero pounds per square inch as measured at the surface.

F. Cavern Allowable Operating Pressure

1. The maximum allowable cavern injection pressure shall be calculated at a depth referenced to the well's deepest cemented casing seat. The injection pressure at the well-head shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an underground source of drinking water. When measured at the surface and calculated with respect to the appropriate reference depth, the maximum allowable cavern injection pressure shall never exceed a pressure gradient of 0.90 PSI per foot of vertical depth.

2. The solution-mining well shall never be operated at pressures over the maximum allowable injection pressure defined above, exceed the maximum allowable pressure as may be established by permit, or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods, including pressure pulsation peaks, abnormal operating conditions, well or cavern tests.

3. The maximum injection pressure for a solution-mining well shall be determined after considering the properties of all injected fluids, the physical properties of the salt stock, well and cavern design, neighboring activities within and above the salt stock, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3321. Safety

A. Emergency Action Plan. A plan outlining procedures for personnel at the facility to follow in case of an emergency shall be prepared and submitted as part of the permit application. The plan shall contain emergency contact telephone numbers, procedures and specific information for facility personnel to respond to a release, upset, incident, accident, or other site emergency. A copy of the plan shall be kept at the facility and shall be reviewed and updated as needed.

B. Controlled Site Access. Access to solution-mining facilities shall be controlled by fencing or other means around the facility property. All points of entry into the facility shall be through a lockable gate system.

C. Personnel. While solution mining, testing, or performing any work requiring a UIC-17 (Work Permit), trained and competent personnel shall be on duty and stationed as appropriate at the solution-mining well during all hours and phases of facility operation. If the solution-mining facility chooses to use an offsite monitoring and control automated telemetry surveillance system, approved by the commissioner, provisions shall be made for trained personnel to be on-call at all times and 24 hours a day staffing of the facility may not be required.

D. Wellhead Protection and Identification

1. A protective barrier shall be installed and maintained around the wellhead as protection from physical or accidental damage by mobile equipment or trespassers.

2. An identifying sign shall be placed at the wellhead of each solution-mining well and shall include at a minimum the operator's name, well/cavern name and number, well's serial number, section-township-range, and any other information required by the Office of Conservation. The sign shall be of durable construction with all lettering kept in a legible condition.

E. Valves and Flowlines

1. All valves, flowlines, flanges, fittings, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

2. All valves, flowlines for injection, fluid withdrawal, and any other flowlines shall be designed to prevent pressures over maximum operating pressure from being exerted on the solution-mining well and cavern and prevent backflow or escape of injected material. The fluid withdrawal side of the wellhead shall have the same pressure rating as the injection side.

3. All flowlines for injection and withdrawal connected to the wellhead of the solution-mining well shall be equipped with remotely operated shut-off valves and shall also have manually operated positive shut-off valves at the wellhead. All remotely operated shut-off valves shall be fail-safe and tested and inspected according to §3321.H.

F. Alarm Systems. Manually activated alarms shall be installed at all cavern facilities. All alarms shall be audible and visible from any normal work location within the facility. The alarms shall always be maintained in proper working order.

G. Emergency Shutdown Valves. Manual shutdown valves shall be installed on all systems of cavern injection and withdrawal and any other flowline going into or out from each solution-mining wellhead. All emergency shutdown valves shall be fail-safe and shall be tested and inspected according to §3321.H.

1. Manual controls for emergency shutdown valves shall be designed for operation from a local control room, at the solution-mining well, any remote monitoring and control location, and at a location that is likely to be accessible to emergency response personnel.

H. Systems Test and Inspection

1. Safety Systems Test. The operator shall annually function-test all critical systems of control and safety. This includes testing of alarms, test tripping of emergency shutdown valves ensuring their closure times are within design specifications, and ensuring the integrity of all electrical, pneumatic, and/or hydraulic circuits. Tests results shall be documented and kept onsite for inspection by an agent of the Office of Conservation.

2. Visual Facility Inspections. Visual inspections of the entire cavern facility shall be conducted each day the facility is operating. At a minimum, this shall include inspections of the wellhead, flowlines, valves, signs, perimeter fencing, and all other areas of the facility. Problems discovered during the inspections shall be corrected timely.

I. Retaining Walls and Spill Containment

1. Retaining walls, curbs, or other spill containment systems shall be designed, built, and maintained around appropriate areas of the facility to collect, retain, and/or otherwise prevent the escape of waste or other materials that may be released through facility upset or accidental spillage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3323. Monitoring Requirements

A. Pressure Gauges, Pressure Sensors, Flow Sensors

1. Pressure gauges that show pressure on the fluid injection string, fluid withdrawal string, and any annulus of the well, including the blanket material annulus, shall be installed at each wellhead. Gauges shall be designed to read gauge pressure in 10 PSIG increments. All gauges shall be properly calibrated and shall always be maintained in good working order. The pressure valves onto which the pressure gauges are affixed shall have 1/2 inch female fittings.

2. Pressure sensors designed to automatically close all emergency shutdown valves in response to a preset pressure (high) shall be installed and properly maintained for all fluid injection and fluid withdrawal strings, and blanket material annulus.

3. Flow sensors designed to automatically close all emergency shutdown valves in response to abnormal increases in cavern injection and withdrawal flow rates shall be installed and properly maintained on each solution-mining well.

B. Continuous Recording Instruments. Continuous recording instrumentation shall be installed and properly maintained for each solution-mining well. Continuous recordings may consist of circular charts, digital recordings,

or similar type. Unless otherwise specified by the commissioner, digital instruments shall record the required information at no greater than one minute intervals. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure or any other parameter being monitored. The chart shall be scaled such that the parameter being recorded is 30 percent to 70 percent of full scale. Instruments shall be housed in weatherproof enclosures when located in areas exposed to climatic conditions. All fluid volumes shall be determined by metering or an alternate method approved by the Office of Conservation. Minimum data recorded shall include the following:

1. wellhead pressures on both the fluid injection and fluid withdrawal strings;
2. wellhead pressure on the blanket material annulus;
3. volume and flow rate of fluid injected; and
4. volume of fluid withdrawn;

C. Casing Inspection.

1. For existing permitted Class III Brine Wells, a casing inspection or similar log shall be run on the entire length of the innermost cemented casing within five years of the effective date of these rules.

2. For all Class III Brine Wells, a casing inspection or similar log shall be run on the entire length of the innermost cemented casing in each well at least once every 10 years.

3. Equivalent alternate monitoring programs to ensure the integrity of the innermost, cemented casing may be approved by the Office of Conservation in place of §3323.C.1 and §3323.C.2 above.

D. Subsidence Monitoring. The owner or operator shall prepare and carry out a plan to monitor ground subsidence at and in the vicinity of the solution-mining cavern(s). The monitoring plan should include at a minimum all wells/caverns belonging to the owner or operator regardless of the status of the cavern. Frequency of subsidence monitoring shall be scheduled to occur annually during the same period. A monitoring report shall be prepared and submitted to the Office of Conservation after completion of each monitoring event.

E. Monitor Wells. Quarterly monitoring of the monitor wells required by 3317.A.2.a.

F. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner or operator demonstrates that manifold monitoring is comparable to individual well monitoring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3325. Pre-Operating Requirements—Completion Report

A. The operator of a solution-mining well shall not begin injection until all required information has been submitted to the Office of Conservation and the operator has received written authorization from the Office of Conservation clearly stating operations may begin. Preauthorization pursuant to this Subsection is not required for workovers.

B. The operator shall submit a report to the Office of Conservation that describes, in detail, the work performed resulting from any approved permitted activity. A report shall include all information relating to the work and information that documents compliance with these rules and the approved permitted activity. The report shall be prepared and submitted for any approved work relating to the construction, installation and completion of the surface portion of the facility and information on the construction, conversion, or workover of the solution-mining well or cavern.

C. Where applicable to the approved permitted activity, information in a completion report shall include:

1. all required state reporting forms containing original signatures;
2. revisions to any operation or construction plans since approval of the permit application;
3. as-built schematics of the layout of the surface portion of the facility;
4. as-built piping and instrumentation diagram(s);
5. copies of applicable records associated with drilling, completing, working over, or converting the solution-mining well and/or cavern including a daily chronology of such activities;
6. revised certified location plat of the solution-mining well if the actual location of the well differs from the location plat submitted with the solution-mining well application;
7. as-built subsurface diagram of the solution-mining well and cavern labeled with appropriate construction, completion, or conversion information, i.e., depth and diameter of all tubulars, depths of top of cap rock and salt, and top and bottom of the cavern;
8. as-built diagram of the surface wellhead labeled with appropriate construction, completion, or conversion information, i.e., valves, gauges, and flowlines;
9. results of any core sampling and testing;
10. results of well or cavern tests such as casing and casing seat tests, well/cavern mechanical integrity pressure and leak tests;
11. copies of any wireline logging such as open hole and/or cased hole logs, the most recent cavern sonar survey, and mechanical integrity test;
12. the status of corrective action on defective wells in the area of review;
13. the proposed operating data;
14. the proposed injection procedures; and
15. any additional data documenting the work performed for the permitted activity, information requested by the Office of Conservation, or any additional reporting requirements imposed by the approved permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3327. Well and Cavern Mechanical Integrity Pressure and Leak Tests

A. The operator of the solution-mining well and cavern shall have the burden of meeting the requirements for well and cavern mechanical integrity. The Office of Conservation shall be notified in writing at least seven days before any scheduled mechanical integrity test. The test may be

witnessed by Office of Conservation personnel but must be witnessed by a qualified third party.

B. Frequency of Tests

1. Without exception or variance to these rules and regulations, all solution mining wells and caverns shall be tested for and satisfactorily demonstrate mechanical integrity before beginning storage activities.

2. For solution mining wells and caverns permitted on the effective date of these regulations. If a mechanical integrity test (MIT) has not been run on the well or cavern within three years prior to the effective date of these regulations, the operator must run an MIT within two years in order to remain in compliance.

3. All subsequent demonstrations of mechanical integrity shall occur at least once every five years. Additionally, mechanical integrity testing shall be done for the following reasons regardless of test frequency:

- a. after physical alteration to any cemented casing or cemented liner;
- b. after performing any remedial work to reestablish well or cavern integrity;
- c. before returning the cavern to hydrocarbon storage service after a period of salt solution mining or washing to purposely increase storage cavern size or capacity;
- d. after completion of any additional mining or salt washing for caverns engaging in simultaneous storage and salt solution mining or washing;
- e. before well closure;
- f. whenever the commissioner determines a test is warranted.

C. Test Method

1. All mechanical integrity pressure and leak tests shall demonstrate no significant leak in the cavern, wellbore, casing seat, and wellhead and the absence of significant fluid movement. Test schedules and methods shall consider neighboring activities occurring at the salt dome to reduce any influences those neighboring activities may have on the cavern being tested.

2. Tests shall be conducted using the nitrogen-brine interface method with density interface and temperature logging. An alternative test method may be used if the alternative test can reliably demonstrate well/cavern mechanical integrity and with prior written approval from the Office of Conservation.

3. The cavern pressure shall be stabilized before beginning the test. Stabilization shall be reached when the rate of cavern pressure change is no more than 10 PSIG during 24 hours.

4. The stabilized test pressure to apply at the surface shall be calculated with respect to the depth of the shallowest occurrence of either the cavern roof or deepest cemented casing seat and shall not exceed a pressure gradient of 0.90 PSI per foot of vertical depth. However, the well or cavern shall never be subjected to pressures that exceed the solution-mining well's maximum allowable operating pressure or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods during testing.

5. A mechanical integrity pressure and leak test shall be run for at least 24 hours after cavern pressure stabilization and must be of sufficient time duration to ensure a sensitive

test. All pressures shall be monitored and recorded continuously throughout the test. Continuous pressure recordings may be achieved through mechanical charts or may be recorded digitally. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be scaled such that the test pressure is 30 percent to 70 percent of full scale. All charts shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure, temperature, or any other monitored parameter.

D. Submission of Pressure and Leak Test Results. One complete copy of the mechanical integrity pressure and leak test results shall be submitted to the Office of Conservation within 60 days of test completion. The report shall include the following minimum information:

1. current well and cavern completion data;
2. description of the test procedure including pretest preparation and the test method used;
3. one paper copy and an electronic version of all wireline logs performed during testing;
4. tabulation of measurements for pressure, volume, temperature, etc.;
5. interpreted test results showing all calculations including error analysis and calculated leak rates. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the commissioner, the owner or operator and the commissioner shall apply methods and standards generally accepted in the industry; and
6. any information the owner or operator of the cavern determines is relevant to explain the test procedure or results.

E. Mechanical Integrity Test Failure

1. Without exception or variance to these rules and regulations, a solution-mining well or cavern that fails a test for mechanical integrity shall be immediately taken out of service. The failure shall be reported to the Office of Conservation according to the Notification Requirements of §3309.H. The owner or operator shall investigate the reason for the failure and shall take appropriate steps to return the solution-mining well or cavern to a full state of mechanical integrity. A solution-mining well or cavern is considered to have failed a test for mechanical integrity for the following reasons:

- a. failure to maintain a change in test pressure of no more than 10 PSIG over a 24-hour period;
- b. not maintaining nitrogen-brine interface levels according to standards applied in the solution-mining industry; or
- c. fluids are determined to have escaped from the solution-mining well or cavern during solution-mining operations.

2. Written procedures for rehabilitation of the solution-mining well or cavern, extended cavern monitoring, or abandonment (closure and post-closure) of the solution-mining well or cavern shall be submitted to the Office of Conservation within 30 days of mechanical integrity test failure.

3. Upon reestablishment of mechanical integrity of the solution-mining well or cavern and before returning either to service, a new mechanical integrity pressure and leak test shall be performed that demonstrates mechanical integrity of the solution-mining well or cavern. The owner or operator shall submit the new test results to the Office of

Conservation for written approval before resuming injection operations.

4. If a solution-mining well or cavern fails to demonstrate mechanical integrity and where mechanical integrity cannot be reestablished, the Office of Conservation may require the owner or operator to begin closure of the well or cavern within six months according to an approved closure and post-closure plan.

5. If a cavern fails mechanical integrity and where rehabilitation cannot be accomplished within six months, the Office of Conservation may waive the six-month closure requirement if the owner or operator is engaged in a cavern remediation study and implements an interim cavern monitoring plan. The owner or operator must seek written approval from the Office of Conservation before implementing a salt cavern monitoring program. The basis for the Office of Conservation's approval shall be that any waiver granted shall not endanger the environment, or the health, safety and welfare of the public. The Office of Conservation may establish a time schedule for salt cavern rehabilitation, cessation of interim cavern monitoring, and eventual cavern closure and post-closure activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3329. Cavern Configuration and Capacity Measurements

A. Sonar caliper surveys shall be performed on all caverns. With prior approval of the Office of Conservation, the operator may use another similar proven technology designed to determine cavern configuration and measure cavern capacity as a substitute for a sonar survey.

B. Frequency of Surveys. A sonar caliper survey shall be performed at least once every five years. At least once every 10 years a sonar caliper survey, or other approved survey, shall be performed that logs the roof of the cavern. Additional surveys as specified by the Office of Conservation shall be performed for any of the following reasons regardless of frequency:

1. before commencing cavern closure operations;
2. whenever leakage into or out of the cavern is suspected;
3. after performing any remedial work to reestablish solution-mining well or cavern integrity; or
4. whenever the Office of Conservation believes a survey is warranted.

C. Submission of Survey Results. One complete copy and an electronic version of each survey shall be submitted to the Office of Conservation within 60 days of survey completion.

1. Survey readings shall be taken a minimum of every 10 feet of vertical depth. Sonar reports shall contain the following minimum information and presentations:

- a. tabulation of incremental and total cavern volume for every survey reading;
- b. tabulation of the cavern radii at various azimuths for every survey reading;
- c. tabulation of the maximum cavern radii at various azimuths;
- d. graphical plot of Cavern Depth versus Volume;
- e. graphical plot of the maximum cavern radii;

f. vertical cross sections of the cavern at various azimuths drawn to an appropriate horizontal and vertical scale;

g. vertical cross section overlays comparing results of current survey and previous surveys;

h. (optional)-isometric or 3-D shade profile of the cavern at various azimuths and rotations.

2. The information submitted resulting from use of an approved alternative survey method to determine cavern configuration and measure cavern capacity shall be determined based on the method or type of survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3331. Inactive Caverns and Caverns in which Mining Activities are to be Concluded

A. The operator shall comply with the following minimum requirements when there has been no injection into a salt cavern for one year or the operator is prepared to conclude mining activities, regardless of the reason:

1. notify the Office of Conservation as per the requirements of §3309.I.3 and §3309.I.9;

2. disconnect all flowlines for injection to the solution-mining well. If the operator anticipates that the cavern will be put back into service within the following year, they may submit a request to the commissioner to allow the cavern to remain inactive without disconnecting the flowlines;

3. maintain continuous monitoring of cavern pressure, fluid withdrawal, and other parameters required by the permit;

4. maintain and demonstrate solution-mining well and cavern mechanical integrity if mining operations were suspended for reasons other than a lack of mechanical integrity. See §3327.B for the frequency of mechanical integrity tests;

5. maintain compliance with financial responsibility requirements of these rules and regulations; and

6. any additional requirements of the Office of Conservation to document the solution-mining well and cavern shall not endanger the environment, or the health, safety and welfare of the public during the period of cavern inactivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3333. Quarterly Operating Reports

A. The operator shall submit quarterly operation reports to the Office of Conservation. Quarterly reports are due no later than 15 days following the end of the reporting month.

B. Quarterly reports shall be submitted electronically on Form UIC 33/34 or successor document and contain the following minimum information acquired weekly during the reporting quarter:

1. operator name, well name, serial number, and location of the solution-mining well;

2. wellhead pressures (PSIG) on the injection string;

3. wellhead pressure (PSIG) on the blanket material annulus;

4. volume in barrels of injected material;

5. results of any monitoring program required by permit or compliance action;

6. summary of any test of the solution-mining well or cavern;

7. summary of any workover performed during the month including minor well maintenance;

8. description of any event resulting in non compliance with these rules which triggers an alarm or shutdown device and the response taken;

9. description of any event that exceeds operating parameters for annulus pressure or injection pressure as may be specified in the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3335. Record Retention

A. The owner or operator shall retain copies of all records, data, and information concerning the design, permitting, construction, and operation of the solution-mining well, cavern, and related surface facility. Records shall be retained throughout the operating life of the solution-mining well and for five years following conclusion of any post-closure care requirements. Records, data, and information shall include, but shall not be limited to the permit application, cementing (primary and remedial), wireline logs, drill records, casing records, casing pressure tests, well recompletion records, well/cavern mechanical integrity tests, cavern capacity and configuration surveys, surface construction, post-closure activities, corrective action, sampling data, etc. Unless otherwise specified by the commissioner, monitoring records obtained pursuant to §3323.B shall be retained by the owner or operator for a minimum of five years from the date of collection. All documents shall be available for inspection by agents of the Office of Conservation at any time.

B. Should there be a change in the owner or operator of the solution-mining well, copies of all records identified in the previous paragraph shall be transferred to the new owner or operator. The new owner or operator shall then have the responsibility of maintaining such records.

C. The Office of Conservation may require the owner or operator to deliver the records to the Office of Conservation at the conclusion of the retention period. If so, the records shall be retained at a location designated by the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§3337. Closure and Post-Closure

A. Closure. The owner or operator shall close the solution-mining well, cavern, surface facility or parts thereof as approved by the Office of Conservation. Closure shall not begin without written authorization from the Office of Conservation.

1. Closure Plan. Plans for closure of the solution-mining well, cavern, and related surface facility shall be submitted as part of the permit application. The closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the closure plan survives the termination of a permit or the cessation of mining operations

or related activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a closure plan where necessary.

2. Plugging and Abandonment. The well/cavern to be abandoned shall be in a state of static equilibrium prior to plugging.

a. A continuous column of cement shall fill the deepest cemented casing from shoe to surface via a series of balanced cement plugs and shall be accomplished as follows:

i. a balanced cement plug shall be placed across the shoe of the deepest cemented casing and tagged to verify the top of cement; and

ii. subsequent balanced cement plugs shall be spotted immediately on top of the previously-placed balanced cement plug. Each plug shall be tagged to verify the top of cement and pressure tested before the next plug is placed.

b. After placing the top plug, the operator shall be required on all land locations to cut and pull the casings a minimum of 5 feet below ground level. A 1/2 inch thick steel plate shall be welded across the top of all casings. The plate shall be inscribed with the plug and abandonment date and the well serial number on top. On all water locations, the casings shall be cut and pulled a minimum of 15 feet below the mud line.

c. The plan of abandonment may be altered if new or unforeseen conditions arise during the well work, but only after approval by the Office of Conservation.

d. Within 20 days of the completion of plugging work, the operator shall file one original and one copy of Form UIC-P&A or its successor document with the Office of Conservation.

3. Closure Plan Requirements. The owner or operator shall review the closure plan annually to determine if the conditions for closure are still applicable to the actual conditions of the solution-mining well, cavern, or surface facility. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a closure plan shall address the following:

a. assurance of financial responsibility as required in §3309.B.1. All instruments of financial responsibility shall be reviewed each year before its renewal date according to the following process:

i. a detailed cost estimate for adequate closure (plugging and abandonment) of the entire solution-mining well facility (solution-mining well, cavern, surface appurtenances, etc.) shall be prepared by a qualified professional and submitted to the Office of Conservation by the date specified in the permit;

ii. the closure plan and cost estimate shall include provisions for closure acceptable to the Office of Conservation;

iii. after reviewing the closure cost estimate, the Office of Conservation may increase, decrease or allow the amount to remain the same;

iv. documentation from the operator showing that the required financial instrument has been renewed shall be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of

financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of funds guaranteed by the financial instrument and suspend or revoke the operating permit. Permit suspensions shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. a prediction of the pressure build-up in the cavern following closure;

c. an analysis of potential pathways for leakage from the cavern, cemented casing shoe, and wellbore. Consideration shall be given to site specific elements of geology, salt cavern geometry and depth, cavern pressure build-up over time due to salt creep and other factors inherent to the salt stock and/or salt dome;

d. procedures for determining the mechanical integrity of the solution-mining well and cavern before closure;

e. removal and proper disposal of any waste or other materials remaining at the facility;

f. closing, dismantling, and removing all equipment and structures located at the surface (including site restoration) if such equipment and structures will not be used for another purpose at the same solution-mining facility;

g. the type, number, and placement of each wellbore or cavern plug including the elevation of the top and bottom of each plug;

h. the type, grade, and quantity of material to be used in plugging;

i. a description of the amount, size, and location (by depth) of casing and any other well construction materials to be left in the solution-mining well;

j. any proposed test or measurement to be made before or during closure.

4. Notice of Intent to Close

a. The operator shall review the closure plan before seeking authorization to begin closure activities to determine if the conditions for closure are still relevant to the actual conditions of the solution-mining well, cavern, or surface facility. Revisions to the method of closure reflected in the plan shall be submitted to the Office of Conservation for approval no later than the date on which the notice of closure is required to be submitted as shown in the subparagraph below.

b. The operator shall notify the Office of Conservation in writing at least 30 days before the expected closure of a solution-mining well, cavern, or surface facility. Notification shall be by submission of a request for a work permit. At the discretion of the Office of Conservation, a shorter notice period may be allowed.

5. Standards for Closure. The following are minimum standards for closing the solution-mining well or cavern. The Office of Conservation may require additional standards prior to actual closure.

a. After permanently concluding mining operations into the cavern but before closing the solution-mining well or cavern, the owner or operator shall:

i. observe and accurately record the shut-in salt cavern pressures and cavern fluid volume for no less than five years or a time period specified by the Office of Conservation to provide information regarding the cavern's natural closure characteristics and any resulting pressure buildup;

ii. using actual pre-closure monitoring data, show and provide predictions that closing the solution-mining well or cavern as described in the closure plan will not result in any pressure buildup within the cavern that could adversely affect the integrity of the solution-mining well, cavern, or any seal of the system.

b. Before closure, the owner or operator shall do mechanical integrity pressure and leak tests to ensure the integrity of both the solution-mining well and cavern.

c. Before closure, the owner or operator shall remove and properly dispose of any free oil or blanket material remaining in the solution-mining well or cavern.

d. Upon permanent closure, the owner or operator shall plug the solution-mining well with cement in a way that will not allow the movement of fluids into or between underground sources of drinking water or outside the salt stock.

6. Closure Report. The owner or operator shall submit a closure report to the Office of Conservation within 30 days after closure of the solution-mining well, cavern, surface facility, or part thereof. The report shall be certified as accurate by the owner or operator and by the person charged with overseeing the closure operation (if other than the owner or operator). The report shall contain the following information:

a. detailed procedures of the closure operation. Where actual closure differed from the plan previously approved, the report shall include a written statement specifying the differences between the previous plan and the actual closure;

b. one original of the appropriate Office of Conservation plug and abandon report form (Form UIC-P&A or successor); and

c. any information pertinent to the closure activity including test or monitoring data.

B. Post-Closure. Plans for post-closure care of the solution-mining well, cavern, and related surface facility shall be submitted as part of the permit application. The post-closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of mining operations or related activities. The requirement to maintain and implement an approved post-closure plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a post-closure plan where necessary.

1. The owner or operator shall review the post-closure plan annually to determine if the conditions for post-closure are still applicable to actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a post-closure plan shall address the following:

a. assurance of financial responsibility as required in §3309.B.1. All instruments of financial responsibility shall be reviewed each year before its renewal date according to the following process:

i.a detailed cost estimate for adequate post-closure care of the entire solution-mining well shall be prepared by a qualified, independent third party and submitted to the Office of Conservation by the date specified in the permit;

ii. the post-closure care plan and cost estimate shall include provisions acceptable to the Office of Conservation and shall reflect the costs for the Office of Conservation to complete the approved post-closure care of the facility;

iii. after reviewing the post-closure cost estimate, the Office of Conservation may increase, decrease or allow the amount to remain the same. The Office of Conservation will send notification of any change needed to the operator;

iv. documentation from the operator showing that the required financial instrument has been renewed must be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of the funds guaranteed by the financial instrument and suspend or revoke the operating permit. Any permit suspension shall remain in effect until renewal documentation is received and accepted by the Office of Conservation.

b. any plans for monitoring, corrective action, site remediation, site restoration, etc., as may be necessary.

2. Where necessary and as an ongoing part of post-closure care, the owner or operator shall continue the following activities:

a. conduct subsidence monitoring for a period of no less than 10 years after closure of the facility;

b. complete any corrective action or site remediation resulting from the operation of a solution-mining well;

c. conduct any groundwater monitoring by the permit until pressure in the cavern displays a trend of behavior that can be shown to pose no threat to cavern integrity, underground sources of drinking water, or other natural resources of the state;

d. complete any site restoration.

3. The owner or operator shall retain all records as required in §3335 for five years following conclusion of post-closure requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed adoption of Statewide Order No. 29-M-3 on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government is not required to perform any function contained in the proposed Rule amendment.

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Natural Resources, Office of Conservation has determined that these amendments will have no estimated effect on small businesses.

Poverty Statement

In accordance with R.S. 49:973, the following statements are submitted after consideration of the impact of the adoption of Statewide Order No. 29-M-3 on poverty as defined therein.

1. The proposed Rule amendment will have no effect on household income, assets, and financial security.

2. The proposed Rule amendment will have no effect on early childhood development and preschool through postsecondary education development.

3. The proposed Rule amendment will have no effect on employment and workforce development.

4. The proposed Rule amendment will have no effect on taxes and tax credits.

5. The proposed Rule amendment will have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., December 3, 2013, at Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9725; or Office of Conservation, 617 North Third Street, Baton Rouge, LA 70802. All inquiries should be directed to Mr. Tyler Gray, an attorney with the Office of Conservation, at the above addresses or by phone to (225) 342-5540 referencing Docket No. IMD-2013-07.

Public Hearing

The Commissioner of Conservation will conduct a public hearing at 9:00 a.m., Tuesday, November 26, 2013, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Class III (Solution Mining) Injection Wells, Statewide Order No. 29-M-3

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

No additional cost to state or local governmental units is anticipated as a result of adoption of the proposed rule changes. The new rules and regulations will result in an increase in workload. In order to adequately provide for the new regulations, two positions are being reassigned from the Oil & Gas Program to the Public Safety Program. Pursuant to Act 368 and Act 369 of the 2013 Regular Legislative Session, the proposed rule provides for implementation of regulations for Class III (Solution-Mining) Injection Wells. The proposed regulations include: 1) documentation of the method by which proof of financial security is to be maintained for closure and post closure costs; 2) maintaining an updated site assessment to include a geological, geomechanical and engineering

assessment of the stability of salt stock and overlying/surrounding sediment based on past, current and planned well and cavern operations; 3) locations of caverns and proposed caverns in relation to other caverns and the periphery of the salt stock are to be provided on maps and cross-section depictions based on the best available information and updated at least every five years; 4) mandatory setback distance locations for salt caverns in relation to the periphery of salt stock and in relation to other man-made structures within salt stock; 5) mandatory monitoring plan implementation for existing caverns within the requirement for setback distance to periphery of salt stock; 6) provisions for consideration of approval to plug and abandon hydrocarbon storage cavern wells; 7) mandatory submission and maintenance of an updated post-closure plan to include subsidence monitoring, corrective action, site remediation, etc., as may be necessary following plugging and abandonment, and 8) increases to minimum testing and monitoring requirements for hydrocarbon storage wells and related caverns.

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

There is no anticipated effect on revenue collections of state or local government units as a result of this rule change.

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

The proposed rule will result in increased costs to the regulated community. The specific costs incurred by the operators include costs related to mechanical integrity tests, sonar surveys, subsidence monitoring requirements, and casing inspection log. Operators will be required to perform a mechanical integrity test (MIT) on each cavern. While many operators currently perform a liquid interface MIT, operators who have not run a MIT in the previous 10 years will now be required to run this test every 5 years. The requirement to perform a MIT using a nitrogen-brine interface test costs approximately \$32,000 including wireline logs, nitrogen, pressure equipment and labor. Additional costs to approximately 15 operators will result from the regularly required sonar surveys, which is estimated to cost \$2,000 a year. Subsidence monitoring requirements, a new obligation for operators on four salt domes in the state that continues post-closure monitoring, is estimated to cost \$35,000 yearly per salt dome in addition to a one-time installation expense of \$85,000 per salt dome. This cost is expected to be shared among dome operators. A majority of cavern operators and/owners are currently meeting the new regulations as required by specific provisions of permits issued by the Office of Conservation. One significant increased expense to all operators will be the casing inspection log, which is required within 5 years of the effective date of the proposed new regulations and then every 10 years thereafter. While this increased cost will be spread out over 5 to 10 years, the Office of Conservation estimates that approximately 70 wells will need casing inspection logs as a result of the proposed regulations, which cost between \$8,000 to \$17,000.

Updated maps and cross sections of caverns in relation to the periphery of salt stock and other manmade structures within the salt stock are required to be submitted every 5 years to the Office of Conservation. In most situations where little or no new information is available for use in this update, the cost will be approximately \$5,000 per operator. If additional well control exists for use in this update the cost will be approximately \$20,000. In the rare event that 3-D seismic data is required for an update by an operator, the cost to interpret this data may reach as high as \$200,000.

Several economic benefits are expected to impact non-governmental groups. Louisiana has numerous consultants, contractors and professionals who will benefit economically

from being hired by the regulated community to perform the increased monitoring, testing and reporting required in these proposed regulations. The proposed regulations are designed to prevent emergency situations and environmental disasters thus preventing substantial economic costs that could reach into the millions of dollars to the regulated community, individual businesses, and the public at large.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no anticipated effect on competition and employment.

James H. Welsh
Commissioner
1310#049

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

**Hydrocarbon Storage Wells in Salt Dome Cavities
(LAC 43:XVII.Chapter 3)**

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XVII.Chapter 3 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed action will adopt Statewide Order No. 29-M (Revision 3), which provides comprehensive regulations for hydrocarbon storage wells in salt dome cavities, and will amend existing Statewide Order No. 29-M, as enacted by Act 368 and Act 369 of the 2013 Legislative Session.

Title 43

NATURAL RESOURCES

Part XVII. Office of Conservation—Injection and Mining

Subpart 3. Statewide Order No. 29-M (Rev. 3)

Chapter 3. Hydrocarbon Storage Wells in Salt Dome Cavities

§301. Definitions

Act—part I, chapter 1 of title 30 of the *Louisiana Revised Statutes*.

Active Cavern Well—a storage well or cavern that is actively being used or capable of being used to store liquid, liquefied, or gaseous hydrocarbons, including standby wells. The term does not include an *inactive cavern well*.

Application—the filing on the appropriate Office of Conservation form(s), including any additions, revisions, modifications, or required attachments to the form(s), for a permit to operate a hydrocarbon storage well or parts thereof.

Aquifer—a geologic formation, groups of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Blanket Material—sometimes referred to as a "pad." The *blanket material* is a fluid placed within a cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. *Blanket material* typically

consists of crude oil, diesel, mineral oil, or some fluid possessing similar noncorrosive, nonsoluble, low-density properties. The *blanket material* is placed between the cavern's outermost hanging string and innermost cemented casing.

Brine—water within a salt cavern that is saturated partially or completely with salt.

Cap Rock—the porous and permeable strata immediately overlying all or part of the salt stock of some salt structures typically composed of anhydrite, gypsum, limestone, and occasionally sulfur.

Casing—metallic pipe placed and cemented in the wellbore for the purpose of supporting the sides of the wellbore and to act as a barrier preventing subsurface migration of fluids out of or into the wellbore.

Catastrophic Collapse—the sudden failure of the overlying strata caused by the removal or otherwise weakening of underlying sediments.

Cavern Roof—the uppermost part of a cavern being just below the neck of the wellbore. The shape of the salt cavern roof may be flat or domed.

Cavern Well—a well extending into the salt stock to facilitate the injection and withdrawal of fluids into a salt cavern.

Cementing—the operation (either primary, secondary, or squeeze) whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

Circulate to the Surface—the observing of actual cement returns to the surface during the primary cementing operation.

Closed Cavern Well—a storage well or cavern that is no longer used or capable of being used to store liquid, liquefied, or gaseous hydrocarbons and is thus subject to the closure and post-closure requirements of §337. The term does not include an inactive well or a previously closed well.

Commissioner—the *commissioner* of conservation of the state of Louisiana.

Contamination—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable of their intended purposes.

Discharge—the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, ground, or waters of the state. A *discharge* shall not include that which is allowed through a federal or state permit.

Effective Date—the date of final promulgation of these rules and regulations.

Emergency Shutdown Valve—a valve that automatically closes to isolate a salt cavern well from surface piping in the event of a specified condition that, if uncontrolled, may cause an emergency.

Exempted Aquifer—an aquifer or its portion that meets the criteria of the definition of underground source of drinking water but which has been exempted according to the procedures set forth in §303.E.2.

Existing Cavern Well or Storage Project—a well, salt cavern, or project permitted to store liquid, liquefied, or gaseous hydrocarbons before the effective date of these regulations.

Facility or Activity—any *facility* or *activity*, including land or appurtenances thereto, that is subject to these regulations

Fluid—any material or substance that flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

Ground Subsidence—the downward settling of the earth's surface with little or no horizontal motion in response to natural or manmade subsurface actions.

Groundwater Aquifer—water in the saturated zone beneath the land surface that contains less than 10,000 mg/l total dissolved solids.

Groundwater Contamination—the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

Hanging String—casing whose weight is supported at the wellhead and hangs vertically in a larger cemented casing or another larger *hanging string*.

Hydrocarbon Storage Cavern—a salt cavern created within the salt stock by solution mining and used to store liquid, liquefied, or gaseous hydrocarbons.

Improved Sinkhole—a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

Inactive Cavern Well—a storage well or cavern that is capable of being used to store liquid, liquefied, or gaseous hydrocarbons but is not being so used, as evidenced by the filing of a written notice with the Office of Conservation in accordance with §309.I.3 and §331.

Injection and Mining Division—the *Injection and Mining Division* of the Louisiana Office of Conservation within the Department of Natural Resources.

Injection Well—a well into which fluids are injected other than fluids associated with active drilling operations.

Injection Zone—a geological formation, group of formations or part of a formation receiving fluids through an injection well.

Leaching—the process of introducing an under-saturated fluid into a salt cavern thereby dissolving additional salt and increasing the volume of the salt cavern.

Mechanical Integrity—an injection well has *mechanical integrity* if there is no significant leak in the casing, tubing, or packer and there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

Migrating—any movement of fluids by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as allowed by law, regulation, or permit.

New Cavern Well—a storage well or cavern permitted after the effective date of these regulations.

Office of Conservation—the Louisiana *Office of Conservation* within the Department of Natural Resources.

Open Borehole—that portion of a well below the production casing and above the salt cavern.

Operator—the person recognized by the Office of Conservation as being responsible for the physical operation of the facility or activity subject to regulatory authority under these rules and regulations.

Owner—the person recognized by the Office of Conservation as owning the facility or activity subject to regulatory authority under these rules and regulations.

Permit—an authorization, license, or equivalent control document issued by the commissioner to implement the requirements of these regulations. *Permit* includes, but is not limited to, area *permits* and emergency *permits*. *Permit* does not include UIC authorization by rule or any *permit* which has not yet been the subject of final agency action, such as a draft *permit*.

Person—an individual, association, partnership, public or private corporation, firm, municipality, state or federal agency and any agent or employee thereof, or any other juridical *person*.

Post-Closure Care—the appropriate monitoring and other actions (including corrective action) needed following cessation of a storage project to ensure that USDWs are not endangered.

Previously Closed Cavern Well—a storage well or cavern that is no longer used or capable of being used to store liquid, liquefied, or gaseous hydrocarbons and was closed prior to the effective date of these regulations.

Produced Water—liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining for brine.

Public Water System—a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

1. any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
2. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

Project—a group of wells or salt caverns used in a single operation.

Release—the accidental or intentional spilling, pumping, leaking, pouring, emitting, leaching, escaping, or dumping of pollutants into or on any air, land, groundwater, or waters of the state. A *release* shall not include that which is allowed through a federal or state permit.

Salt Dome—a diapiric, typically circular structure that penetrates, uplifts, and deforms overlying sediments as a result of the upward movement of a salt stock in the subsurface. Collectively, the *salt dome* includes the salt stock and any overlying uplifted sediments.

Salt Stock—a typically cylindrical formation composed chiefly of an evaporite mineral that forms the core of a salt dome. The most common form of the evaporite mineral is halite known chemically as sodium chloride (NaCl). Cap rock shall not be considered a part of the *salt stock*.

Schedule of Compliance—a schedule or remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the act and these regulations.

Site—the land or water area where any facility or activity is physically located or conducted including adjacent land used in connection with the facility or activity.

Solution-Mined Salt Cavern—a cavity or cavern created within the salt stock by dissolution with water.

Solution Mining Injection Well—a well used to inject fluids, other than fluids associated with active drilling operations, for the extraction of minerals or energy.

State—the state of Louisiana.

Subsidence—see *ground subsidence*.

Surface Casing—the first string of casing installed in a well, excluding conductor casing.

UIC—the Louisiana State Underground Injection Control Program.

Unauthorized Discharge—a continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the commissioner of conservation.

Underground Source of Drinking Water—an aquifer or its portion:

1. which supplies any public water system; or
2. which contains a sufficient quantity of groundwater to supply a public water system; and
 - a. currently supplies drinking water for human consumption; or
 - b. contains fewer than 10,000 mg/l total dissolved solids; and which is not an exempted aquifer.

USDW—see *underground source of drinking water*.

Waters of the State—both surface and underground waters within the state of Louisiana including all rivers, streams, lakes, ground waters, and all other water courses and waters within the confines of the state, and all bordering waters, and the Gulf of Mexico.

Well—a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or, a subsurface fluid distribution system.

Well Plug—a fluid-tight seal installed in a borehole or well to prevent the movement of fluids.

Well Stimulation—several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for injection fluids to move more readily into the formation, and includes such actions as:

1. surging;
2. jetting;
3. blasting;
4. acidizing;
5. hydraulic fracturing.

Workover—to perform one or more of a variety of remedial operations on an injection well, such as cleaning, perforation, changing tubing, deepening, squeezing, plugging back, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 3:310 (July 1977), amended LR 40:

§303. General Provisions

A. Applicability

1. These rules and regulations shall apply to applicants, owners, or operators of a solution-mined salt cavern to store liquid, liquefied, or gaseous hydrocarbons.

2. That except as to liquid, liquefied, or gaseous hydrocarbon storage projects begun before October 1, 1976, no such project to develop or use a salt dome in the state of Louisiana for the injection, storage and withdrawal of liquid, liquefied, or gaseous hydrocarbons shall be allowed until the commissioner has issued an order following a public hearing after 10-day notice, under the rules covering such matters, which order shall include the following findings of fact:

a. that the area of the salt dome sought to be used for the injection, storage, and withdrawal of liquid, liquefied, or gaseous hydrocarbons is suitable and feasible for such use as to area, salt volume, depth and other physical characteristics;

b. that the use of the salt dome cavern for the storage of liquid, liquefied, or gaseous hydrocarbons will not contaminate other formations containing fresh water, oil, gas, or other commercial mineral deposits, except salt;

c. that the proposed storage, including all surface pits and surface storage facilities incidental thereto which are used in connection with the salt dome cavern storage operation, will not endanger lives or property and is environmentally compatible with existing uses of the salt dome area, and which order shall provide that:

i. liquid, liquefied, or gaseous hydrocarbons, which are injected and stored in a salt dome cavern, shall at all times be deemed the property of the injector, his successors or assigns, subject to the provisions of any contract with the affected land or mineral owners; and

ii. in no event shall the owner of the surface of the lands or water bottoms or of any mineral interest under or adjacent to which the salt dome cavern may lie, or any other person, be entitled to any right of claim in or to such liquid, liquefied, or gaseous hydrocarbons stored unless permitted by the injector;

d. that temporary loss of jobs caused by the storage of liquid, liquefied, or gaseous hydrocarbons will be corrected by compensation, finding of new employment, or other provisions made for displaced labor;

e. that due consideration has been given to alternative sources of water for the leaching of cavities.

3. That in presenting evidence to the commissioner to enable him to make the findings described above, the applicant shall demonstrate that the proposed storage of liquid, liquefied, or gaseous hydrocarbons will be conducted in a manner consistent with established practices to preserve the integrity of the salt deposit and the overlying sediments. This shall include an assessment of the stability of the proposed cavern design, particularly with regard to the size, shape and depth of cavern, the amount of separation among caverns, the amount of separation between the outermost cavern wall and the periphery of the salt deposit, and any other requirements of this Rule.

4. That these regulations shall apply to all liquid, liquefied, or gaseous hydrocarbon storage projects begun before October 1, 1976, as specified in §303.2, except for the requirements under §307 and §311.A-H. Any liquid, liquefied, or gaseous hydrocarbon storage projects begun

before October 1, 1976 shall fulfill the requirements of §309.K within one year of the effective date of these regulations.

B. Prohibition of Unauthorized Injection

1. The construction, conversion, or operation of a hydrocarbon storage well or salt cavern without obtaining a permit from the Office of Conservation is a violation of these rules and regulations and applicable laws of the state of Louisiana.

2. For existing hydrocarbon storage caverns that are in compliance with Statewide Order No. 29-M, but not in compliance with Statewide Order No. 29-M (Revision 3) as of the effective date of these rules, they may continue to operate for one year under Statewide Order No. 29M. Within that year, the owner or operator must submit an alternate means of compliance or a request for a variance pursuant to §303.F and/or present a corrective action plan to meet the requirements of Statewide Order No. 29-M (Revision 3). During the review period of the request until a final determination is made regarding the alternate means of compliance or variance and/or corrective action plan, the affected solution-mining well may continue to operate in compliance.

3. By no later than one year after authorization of these rules the owner or operator shall provide for review documentation of any variance previously authorized by the Office of Conservation. Based on that review, the commissioner may terminate, modify, or revoke and reissue the existing permit with the variance if it is determined that continued operations cannot be conducted in a way that is protective of the environment, or the health, safety, and welfare of the public. The process for terminating, modifying, or revoking and reissuing the permit with the variance is set forth in 311.K. During the review period the affected hydrocarbon storage well may continue to operate in compliance with such variance.

C. Prohibition on Movement of Fluids into Underground Sources of Drinking Water

1. No authorization by permit shall allow the movement of injected or stored fluids into underground sources of drinking water or outside the salt stock. The owner or operator of the hydrocarbon storage well shall have the burden of showing that this requirement is met.

2. The Office of Conservation may take emergency action upon receiving information that injected or stored fluid is present in or likely to enter an underground source of drinking water or may present an imminent and substantial endangerment to the environment, or the health, safety and welfare of the public.

D. Prohibition of Surface Discharges. The intentional, accidental, or otherwise unauthorized discharge of fluids, wastes, or process materials into manmade or natural drainage systems or directly into waters of the state is prohibited.

E. Identification of Underground Sources of Drinking Water and Exempted Aquifers

1. The Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and shall protect as an underground source of drinking water, except where exempted under §303.E.2 all aquifers or parts of aquifers that meet the definition of an underground source of drinking water. Even if the Office of Conservation

has not specifically identified an aquifer, it is an underground source of drinking water if it meets the definition.

2. After notice and opportunity for a public hearing, the Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and describe in geographic or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts thereof that the Office of Conservation proposes to denote as exempted aquifers if they meet the following criteria:

- a. the aquifer does not currently serve as a source of drinking water; and
- b. the aquifer cannot now and shall not in the future serve as a source of drinking water because:
 - i. it is mineral, hydrocarbon, or geothermal energy producing or can be demonstrated to contain minerals or hydrocarbons that when considering their quantity and location are expected to be commercially producible;
 - ii. it is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical;
 - iii. it is so contaminated that it would be economically or technologically impractical to render said water fit for human consumption; or
 - iv. it is located in an area subject to severe subsidence or catastrophic collapse; or
- c. the total dissolved solids content of the groundwater is more than 3,000 mg/l and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

F. Exceptions/Variations/Alternative Means of Compliance

1. Except where noted in specific provisions of these rules and regulations, the Office of Conservation may allow, on a case-by-case basis, exceptions or variances to these rules and regulations. It shall be the obligation of the applicant, owner, or operator to show that the requested exception or variance and any associated mitigating measures shall not result in an unacceptable increase of endangerment to the environment, or the health, safety and welfare of the public. The applicant, owner, or operator shall submit a written request to the Office of Conservation detailing the reason for the requested exception or variance. No deviation from the requirements of these rules or regulations shall be undertaken by the applicant, owner, or operator without prior written authorization from the Office of Conservation.

a. When injection does not occur into, through, or above an underground source of drinking water, the commissioner may authorize a hydrocarbon storage well or project with less stringent requirements for area-of review, construction, mechanical integrity, operation, monitoring, and reporting than required herein to the extent that the reduction in requirements will not result in an increased risk of movements of fluids into an underground source of drinking water or endanger the public.

b. The commissioner shall issue an order explaining the reasons for the action when reducing requirements under this Section.

2. Granting of exceptions or variances to these rules and regulations shall only be considered upon proper

showing by the applicant, owner, or operator at a public hearing that such exception or variance is reasonable, justified by the particular circumstances, and consistent with the intent of these rules and regulations regarding physical and environmental safety and the prevention of waste. The requester of the exception or variance shall be responsible for all costs associated with a public hearing.

3. Hydrocarbon storage caverns in existence, as of the effective date of these rules, or hydrocarbon storage wells and/or caverns with approved applications containing information submitted pursuant to Subsection 307.F, may operate in accordance with alternative means of compliance approved by the commissioner of conservation. Alternative means of compliance shall mean operations that are capable of demonstrating a level of performance, which meets or exceeds the standards contemplated by these regulations. Owners or operators of caverns existing at the time of these rules may submit alternative means of compliance to be approved by the commissioner of conservation. The commissioner may review and approve upon finding that the alternative means of compliance meet, ensure, and comply with the purpose of the rules and regulations set forth herein provided the proposed alternative means of compliance ensures comparable or greater safety of personnel and property, protection of the environment and public, quality of operations and maintenance, and protection of the USDW.

G. Additional Requirements. The commissioner may prescribe additional requirements for hydrocarbon storage wells or projects in order to protect USDWs and the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 3:310 (July 1977), amended LR 40:

§305. Permit Requirements

A. Applicability. No person shall construct, convert, or operate a hydrocarbon storage well or cavern without first obtaining written authorization (permit) from the Office of Conservation.

B. Application Required. Applicants for a hydrocarbon storage well or cavern, permittees with expiring permits, or any person required to have a permit shall complete, sign, and submit an application form with all required attachments and documentation to the Office of Conservation. The complete application shall contain all information necessary to show compliance with applicable state laws and these regulations.

C. Who Applies. It is the duty of the owner or proposed owner of a facility or activity to submit a permit application and obtain a permit. When a facility or activity is owned by one person and operated by another, it is the duty of the operator to file and obtain a permit.

D. Signature Requirements. All permit applications shall be signed as follows.

1. Corporations. By a principal executive officer of at least the level of vice-president, or duly authorized representative of that person if the representative performs similar policy making functions for the corporation. A person is a duly authorized representative only if:

a. the authorization is made in writing by a principal executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or position having responsibility for the overall operation of a hydrocarbon storage facility, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

2. Limited Liability Company (LLC). By a member if the LLC is member-managed, by a manager if the LLC is manager-managed, or by a duly authorized representative only if:

a. the authorization is made in writing by an individual who would otherwise have signature authority as outlined in §305.D.2 above;

b. the authorization specifies either an individual or position having responsibility for the overall operation of a hydrocarbon storage well, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

3. Partnership or Sole Proprietorship. By a general partner or proprietor, respectively; or

4. Public Agency. By either a principal executive officer or a ranking elected official of a municipality, state, federal, or other public agency.

E. Signature Reauthorization. If an authorization above is no longer accurate because a different individual or position has responsibility for the overall operation of a hydrocarbon storage facility, a new authorization satisfying the signature requirements must be submitted to the Office of Conservation before or concurrent with any reports, information, or applications required to be signed by an authorized representative.

F. Certification. Any person signing an application shall make the following certification on the application.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine, and/or imprisonment."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§307. Application Content

A. The following minimum information shall be submitted in a permit application. The applicant shall also refer to the appropriate application form for any additional information that may be required.

B. Administrative information:

1. all required state application form(s);
2. nonrefundable application fee(s) as per LAC 43:XIX.Chapter 7 or successor document;
3. name and mailing address of the applicant and the physical address of the hydrocarbon storage facility;

4. operator's name, address, telephone number, and e-mail address;

5. ownership status as federal, state, private, public, or other entity;

6. brief description of the nature of the business associated with the activity;

7. activity or activities conducted by the applicant which require the applicant to obtain a permit under these regulations;

8. up to four SIC codes which best reflect the principal products or services provided by the facility;

9. a listing of all permits or construction approvals that the applicant has received or applied for under any of the following programs and which specifically affect the legal or technical ability of the applicant to undertake the activity or activities to be conducted by the applicant under the permit being sought:

a. the Louisiana hazardous waste management;

b. this or any other underground injection control program;

c. NPDES Program under the Clean Water Act;

d. Prevention of Significant Deterioration (PSD) Program under the Clean Air Act;

e. Nonattainment Program under the Clean Air Act;

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. ocean dumping permit under the Marine Protection Research and Sanctuaries Act;

h. dredge or fill permits under section 404 of the Clean Water Act; and

i. other relevant environmental permits including, but not limited to any state permits issued under the Louisiana Coastal Resources Program, the Louisiana Surface Mining Program, or the Louisiana Natural and Scenic Streams System;

10. acknowledgment as to whether the facility is located on Indian lands or other lands under the jurisdiction or protection of the federal government, or whether the facility is located on state water bottoms or other lands owned by or under the jurisdiction or protection of the state of Louisiana;

11. documentation of financial responsibility for closure and post-closure, or documentation of the method by which proof of financial responsibility for closure and post-closure will be provided. Before making a final permit decision, the instrument of financial responsibility for closure and post-closure must be submitted to and approved by the Office of Conservation;

12. names and addresses of all property owners within the area of review of the solution-mined cavern.

C. Maps and related information:

1. certified location plat of the hydrocarbon storage well prepared and certified by a registered civil engineer or registered land surveyor. The location plat shall be prepared according to standards of the Office of Conservation;

2. topographic or other map(s) extending at least one mile beyond the property boundaries of the hydrocarbon storage facility depicting the facility and each well where fluids are injected underground, and those wells, springs, or surface water bodies, and drinking water wells listed in

public records or otherwise known to the applicant in the map area;

3. the section, township and range of the area in which the hydrocarbon storage well is located and any parish, city or municipality boundary lines within one mile of the facility location;

4. map(s) showing the hydrocarbon storage well for which the permit is sought, the project area or property boundaries of the facility in which the hydrocarbon storage well is located, and the applicable area-of-review. Within the area-of-review, the map(s) shall show the well name, well number, well state serial number, and location of all existing producing wells, injection wells, abandoned wells and dry holes, public water systems and water wells. The map(s) shall also show surface bodies of water, mines (surface and subsurface), quarries, and other pertinent surface features including residences and roads. Only information of public record and pertinent information known to the applicant is required to be included on the map(s);

5. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area-of-review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

6. generalized maps and cross sections illustrating the regional geologic setting;

7. structure contour mapping of the salt stock on a scale no smaller than 1 inch to 500 feet;

8. maps and vertical cross sections detailing the geologic structure of the local area. The cross sections shall be structural (as opposed to stratigraphic cross sections), be referenced to sea level, show the hydrocarbon storage well and the cavern being permitted, all surrounding salt caverns regardless of use and current status, conventional (room and pillar) mines, and all other boreholes and wells that penetrate the salt stock. Cross sections should be oriented to indicate the closest approach to surrounding caverns, boreholes, wells, the edge of the salt stock, etc. and shall extend at least one mile beyond the edge of the salt stock unless the edge of the salt stock and any existing oil and gas production can be demonstrated in a shorter distance and is administratively approved by the Office of Conservation. Salt caverns shall be depicted on the cross sections using data from the most recent salt cavern sonar. Known faulting in the area shall be illustrated on the cross sections such that the displacement of subsurface formations is accurately depicted;

9. sufficient information, including data and maps, to enable the Office of Conservation to identify oil and gas activity in the vicinity of the salt dome and potential effects upon the proposed well; and

10. any other information required by the Office of Conservation to evaluate the hydrocarbon storage well, salt cavern, storage project, and related surface facility.

D. Area-of-Review Information. Refer to §313.E for area-of-review boundaries and exceptions. Only information of public record or otherwise known to the applicant need be researched or submitted with the application, however, a diligent effort must be made to identify all wells and other manmade structures that penetrate or are within the salt stock in response to the area-of-review requirements. The

applicant shall provide the following information on all wells or structures within the defined area-of-review:

1. a discussion of the protocol used by the applicant to identify wells and manmade structures that penetrate or are within the salt stock in the defined area-of-review;

2. a tabular listing of all known water wells in the area-of-review to include the name of the operator, well location, well depth, well use (domestic, irrigation, public, etc.) and current well status (active, abandoned, etc.);

3. a tabular listing of all known wells (excluding water wells) in the area-of-review with penetrations into the cap rock or salt stock to include at a minimum:

a. operator name, well name and number, state serial number (if assigned), and well location;

b. well type and current well status (producing, disposal, storage, solution mining, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

c. well depth, construction, completion (including completion depths), plug and abandonment data; and

d. any additional information the commissioner may require;

4. the following information shall be provided on manmade structures within the salt stock regardless of use, depth of penetration, or distance to the hydrocarbon storage well or cavern being the subject of the application:

a. a tabular listing of all salt caverns to include:

i. operator name, well name and number, state serial number, and well location;

ii. current or previous use of the cavern (waste disposal, hydrocarbon storage, solution mining), current status of the cavern (active, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

iii. cavern depth, construction, completion (including completion depths), plug and abandonment data;

b. a tabular listing of all conventional (dry or room and pillar) mining activities, whether active or abandoned. The listing shall include the following minimum items:

i. owner or operator name and address;

ii. current mine status (active, abandoned);

iii. depth and boundaries of mined levels;

iv. the closest distance of the mine in any direction to the hydrocarbon storage well and cavern.

E. Technical Information. The applicant shall submit, as an attachment to the application form, the following minimum information:

1. for existing caverns, the results of a current cavern sonar survey and mechanical integrity pressure and leak tests;

2. corrective action plan required by §313.F for wells or other manmade structures within the area-of-review that penetrate the salt stock but are not properly constructed, completed, or plugged and abandoned;

3. plans for performing the geological, geomechanical, engineering, and other site assessment studies of §313 to assess the stability of the salt stock and overlying and surrounding sediments based on past, current, and planned well and cavern operations. If such studies are complete, submit the results obtained along with an interpretation of the results;

4. properly labeled schematic of the surface construction details of the hydrocarbon storage well to include the wellhead, gauges, flowlines, and any other pertinent details;

5. properly labeled schematic of the subsurface construction and completion details of the hydrocarbon storage well and cavern to include borehole diameters; all cemented casings with cement specifications, casing specifications (size, depths, etc.); all hanging strings showing sizes and depths set; total depth of well; top, bottom, and diameter of cavern; and any other pertinent details;

6. surface site diagram(s) of the facility in which the hydrocarbon storage well is located, including but not limited to surface pumps, piping and instrumentation, controlled access roads, fenced boundaries, field offices, monitoring and safety equipment, etc.;

7. unless already obtained, a proposed formation testing program to obtain the geomechanical properties of the salt stock;

8. proposed injection and withdrawal procedures;

9. plans and procedures for operating the hydrocarbon storage well, cavern, and related surface facility to include at a minimum:

a. average and maximum daily rate and volume of fluid to be injected;

b. average and maximum injection pressure; and

c. the cavern design requirements of §315, including, but not limited to cavern spacing requirements;

d. enhanced monitoring plan implementation for any existing cavern within the mandatory setback distance location of §315.B.3;

e. the well construction and completion requirements of §317, including, but not limited to open borehole surveys, casing and cementing, casing and casing seat tests, cased borehole surveys, hanging strings, and wellhead components and related connections;

f. the operating requirements of §319, including, but not limited to cavern roof restrictions, blanket material, remedial work, well recompletion, multiple well caverns, cavern allowable operating pressure and rates, and disposition of extracted cavern fluid for pressure management.

g. the safety requirements of §321, including, but not limited to an emergency action plan, controlled site access, facility identification, personnel, wellhead protection and identification, valves and flowlines, alarm systems, emergency shutdown valves, systems test and inspections, and surface facility retaining walls and spill containment, contingency plans to cope with all shut-ins as a result of noncompliance with these regulations or well failures to prevent the migration of contaminating fluids into underground sources of drinking water;

h. the monitoring requirements of §323, including, but not limited to equipment requirements such as pressure gauges, pressure sensors and flow sensors, continuous recording instruments, and subsidence monitoring, as well as a description of methods that will be undertaken to monitor cavern growth;

i. the pre-operating requirements of §325, specifically the submission of a completion report, and the information required therein;

j. the mechanical integrity pressure and leak test requirements of §327, including, but not limited to frequency of tests, test methods, submission of pressure and leak test results, and notification of test failures;

k. the cavern configuration and capacity measurement procedures of §329, including, but not limited to sonar caliper surveys, frequency of surveys, and submission of survey results;

l. the requirements for inactive caverns in §331;

m. the reporting requirements of §333, including, but not limited to the information required in monthly operation reports;

n. the record retention requirements of §335;

o. the closure and post-closure requirements of §337, including, but not limited to closure plan requirements, notice of intent to close, standards for closure, and post-closure requirements;

p. assistance to residents of areas deemed to be at immediate potential risk in the event of a sinkhole developing or other incident that requires an evacuation if the potential risk or evacuation is associated with the operation of the solution-mining well or cavern;

q. reimbursement to the state or any political subdivision of the state for reasonable and extraordinary costs incurred in responding to or mitigating a disaster or emergency due to a violation of this Subsection or any rule, regulation or order promulgated or issued pursuant to this Subsection. Such costs shall be subject to approval by the director of the governor's Office of Homeland Security and Emergency Preparedness prior to being submitted to the permittee for reimbursement. Such payments shall not be construed as an admission of responsibility or liability for the emergency or disaster;

r. any other information pertinent to the operation of the hydrocarbon storage well, including, but not limited to any waiver for surface siting, monitoring equipment and safety procedures.

F. If an alternative means of compliance has previously been approved by the commissioner of conservation within an area permit, applicants may submit means of compliance for new applications for wells and/or storage caverns within the same area permit in order to meet the requirements of E.9.f, g, and h of this Section.

G. Confidentiality of Information. In accordance with R.S. 44.1 et seq., any information submitted to the Office of Conservation pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application for, or instructions or, in the case of other submissions, by stamping the words "Confidential Business Information" on each page containing such information. If no claim is made at the time of submission, the Office of Conservation may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in R.S. 44.1 et seq. (public information).

1. Claims of confidentiality for the following information will be denied:

a. the name and address of any permit applicant or permittee; and

b. information which deals with the existence, absence, or level of contaminants in drinking water or zones other than the approved injection zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§309. Legal Permit Conditions

A. Signatories. All reports required by permit or regulation and other information requested by the Office of Conservation shall be signed as in applications by a person described in §305.D or §305.E.

B. Financial Responsibility

1. Closure and Post-Closure. The owner or operator of a hydrocarbon storage well shall maintain financial responsibility and the resources to close, plug and abandon and where necessary, post-closure care of the hydrocarbon storage well, cavern, and related facility as prescribed by the Office of Conservation. Evidence of financial responsibility shall be by submission of a surety bond, a letter of credit, certificate of deposit, or other instrument acceptable to the Office of Conservation. The amount of funds available shall be no less than the amount identified in the cost estimate of the closure plan of §337.A and post-closure plan of §337.B. Any financial instrument filed in satisfaction of these financial responsibility requirements shall be issued by and drawn on a bank or other financial institution authorized under state or federal law to operate in the state of Louisiana. In the event that an operator has previously provided financial security pursuant to LAC 43: XVII.309, such operator shall provide increased financial security if required to remain in compliance with this Section, within 30 days after notice from the commissioner.

2. Renewal of Financial Responsibility. Any approved instrument of financial responsibility coverage shall be renewable yearly. Financial security shall remain in effect until release thereof is granted by the commissioner pursuant to written request by the operator. Such release shall only be granted after plugging and abandonment and associated site restoration is completed and inspection thereof indicates compliance with applicable regulations or upon transfer of such well approved by the commissioner.

C. Duty to Comply. The operator must comply with all conditions of a permit. Any permit noncompliance is a violation of the act, the permit and these rules and regulations and is grounds for enforcement action, permit termination, revocation and possible reissuance, modification, or denial of any future permit renewal applications if the commissioner determines that such noncompliance endangers underground sources of drinking water. If the commissioner determines that such noncompliance is likely to endanger underground sources of drinking water, it shall be the duty of the operator to prove that continued operation of the hydrocarbon storage well shall not endanger the environment, or the health, safety and welfare of the public.

D. Duty to Halt or Reduce Activity. It shall not be a defense for an owner or operator in an enforcement action to claim it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this Rule or permit.

E. Duty to Mitigate. The owner or operator shall take all reasonable steps to minimize or correct any adverse impact on the environment such as the contamination of underground sources of drinking water resulting from a noncompliance with the permit or these rules and regulations.

F. Proper Operation and Maintenance

1. The operator shall always properly operate and maintain all facilities and systems of injection, withdrawal, and control (and related appurtenances) installed or used to achieve compliance with the permit or these rules and regulations. Proper operation and maintenance include effective performance (including well and cavern mechanical integrity), adequate funding, adequate operation, staffing and training, and adequate process controls. This provision requires the operation of back-up, auxiliary facilities, or similar systems when necessary to achieve compliance with the conditions of the permit or these rules and regulations.

2. The operator shall address any unauthorized escape, discharge, or release of any material from the hydrocarbon well, or part thereof that is in violation of any state or federal permit or which is not incidental to normal operations, with a corrective action plan. The plan shall address the cause, delineate the extent, and determine the overall effects on the environment resulting from the escape, discharge, or release. The Office of Conservation shall require the operator to formulate a plan to remediate the escaped, discharged, or released material if the material is believed to have entered or has the possibility of entering an underground source of drinking water.

3. The Office of Conservation may immediately prohibit further operations if it determines that continued operations at a hydrocarbon storage well, or part thereof, may cause unsafe operating conditions, or endanger the environment, or the health, safety and welfare of the public. The prohibition shall remain in effect until it is determined that continued operations can and shall be conducted safely. It shall be the duty of the operator to prove that continued operation of the hydrocarbon storage well, or part thereof, shall not endanger the environment, or the health, safety and welfare of the public.

G. Inspection and Entry. Inspection and entry at a hydrocarbon storage well facility by Office of Conservation personnel shall be allowed as prescribed in R.S. 30:4.

H. Property Rights. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege or servitude.

I. Notification Requirements. The operator shall give written, and where required, verbal notice to the Office of Conservation concerning activities indicated herein.

1. Any change in the principal officers, management, owner or operator of the hydrocarbon storage well shall be reported to the Office of Conservation in writing within 10 days of the change.

2. Planned physical alterations or additions to the hydrocarbon storage well, cavern, surface facility or parts thereof that may constitute a modification or amendment of the permit. No mechanical integrity tests, sonar caliper surveys, remedial work, well or cavern abandonment, or any test or work on a cavern well (excluding an interface survey

not associated with a mechanical integrity test) shall be performed without prior authorization from the Office of Conservation. The operator must submit the appropriate work permit request form (Form UIC-17 or subsequent document) for approval.

3. Whenever a hydrocarbon storage cavern is removed from service and the cavern is expected to remain out of service for one year or more, the operator shall notify the Office of Conservation in writing within seven days of the cavern becoming inactive (out-of-service). The notification shall include the date the cavern was removed from service, the reason for taking the cavern out of service, and the expected date, if known, when the cavern may be returned to service. See §331 for additional requirements for inactive caverns.

4. The operator of a new or converted hydrocarbon storage well shall not begin storage operations until the Office of Conservation has been notified of the following:

a. well construction or conversion is complete, including submission of a notice of completion, a completion report, and all supporting information (e.g., as-built diagrams, records, sampling and testing results, well and cavern tests, logs, etc.) required in §325;

b. a representative of the commissioner has inspected the well and/or facility within 10 working days of the notice of completion required in Subparagraph a above and finds it is in compliance with the conditions of the permit; and

c. the operator has received written approval from the Office of Conservation indicating hydrocarbon storage operations may begin.

5. Noncompliance or anticipated noncompliance with the permit or applicable regulations (which may result from any planned changes in the permitted facility or activity) including a failed mechanical integrity pressure and leak test.

6. Permit Transfer. A permit is not transferable to any person except after giving written notice to and receiving written approval from the Office of Conservation indicating that the permit has been transferred. This action may require modification or revocation and re-issuance of the permit to change the name of the operator and incorporate other requirements as may be necessary, including but not limited to financial responsibility.

7. Compliance Schedules. Report of compliance or noncompliance with interim and final requirements contained in any compliance schedule in these regulations, or any progress reports, shall be submitted to the commissioner no later than 14 days following each schedule date.

8. Twenty-Four Hour Reporting

a. The operator shall report any noncompliance that may endanger the environment, or the health, safety and welfare of the public. Any information pertinent to the noncompliance shall be reported to the Office of Conservation by telephone at (225) 342-5515 within 24 hours from when the operator became aware of the circumstances. In addition, a written submission shall be provided within five days from when the operator became aware of the circumstances. The written notification shall contain a description of the noncompliance and its cause, the periods of noncompliance including exact times and dates,

and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

b. The following additional information must also be reported within the 24-hour period:

i. monitoring or other information (including a failed mechanical integrity test) that suggests the hydrocarbon storage operations may cause an endangerment to underground sources of drinking waters, oil, gas, other commercial mineral deposits (excluding the salt), neighboring salt operations of any kind, or movement outside the salt stock or cavern;

ii. any noncompliance with a regulatory or permit condition or malfunction of the injection/withdrawal system (including a failed mechanical integrity test) that may cause fluid migration into or between underground sources of drinking waters or outside the salt stock or cavern.

9. The operator shall give written notification to the Office of Conservation upon permanent conclusion of hydrocarbon storage operations. Notification shall be given within seven days after concluding storage operations. The operator shall review its post-closure plan to determine if changes to the plan are needed. The Office of Conservation must approve any changes to the post-closure plan before operator implementation.

10. The operator shall give written notification before abandonment (closure) of the hydrocarbon storage well, related surface facility, or in the case of area permits before closure of the project. Abandonment (closure) shall not begin before receiving written authorization from the Office of Conservation.

11. When the operator becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Office of Conservation, the operator shall promptly submit such facts and information.

J. Duration of Permits

1. Authorization to Operate. Authorization by permit to operate a hydrocarbon storage well and salt cavern shall be valid for the life of the well and salt cavern, unless suspended, modified, revoked and reissued, or terminated for cause as described in §311.K. The commissioner may issue for cause any permit for a duration that is less than the full allowable term under this Section.

2. Authorization to Drill, Construct, or Convert. Authorization by permit to drill, construct, or convert a hydrocarbon storage well shall be valid for one year from the effective date of the permit. If drilling or conversion is not completed in that time, the permit shall be null and void and the operator must obtain a new permit.

3. Extensions. The operator shall submit to the Office of Conservation a written request for an extension of the time of Paragraph 2 above; however, the Office of Conservation shall approve the request only for just cause and only if the permitting conditions have not changed. The operator shall have the burden of proving claims of just cause.

K. Compliance Review. The commissioner shall review each hydrocarbon storage well permit or area permit at least once every five years to determine whether it should be modified, revoked and reissued, terminated, or if minor

modifications are needed. Commencement of the permit review process for each facility shall proceed as authorized by the commissioner of conservation.

1. As a part of the five-year permit review, the operator shall submit to the Office of Conservation updated maps and cross sections based upon best available information depicting the locations of its own caverns and proposed caverns in relation to each other, in relation to the periphery of the salt stock, and in relation to other operators' salt caverns (including solution mining caverns, disposal caverns, storage caverns) in the salt stock. Also, refer to §313 and §315.

2. As a part of the five year permit review, the well operator shall review the closure and post-closure plan and associated cost estimates of §337 to determine if the conditions for closure are still applicable to the actual conditions.

L. Schedules of Compliance. The permit may specify a schedule of compliance leading to compliance with the act and these regulations.

1. Time for Compliance. Any schedules of compliance under this Section shall require compliance as soon as possible but not later than three years after the effective date of the permit.

2. Interim Dates. Except as provided in Subparagraph b below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirements (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

M. Area or Project Permit Authorization

1. The commissioner may issue a hydrocarbon storage well or cavern permit on an area basis, rather than for each well or cavern individually, provided that the permit is for wells or caverns:

a. described and identified by location in permit applications if they are existing wells, except that the commissioner may accept a single description of wells or caverns with substantially the same characteristics;

b. within the same salt dome, storage facility site, or storage project; and

c. operated by a single owner or operator.

2. Area permits shall specify:

a. the area within which hydrocarbon storage is authorized; and

b. the requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

3. The area permit may authorize the operator to construct and operate, convert, or plug and abandon wells within the permit area provided:

a. the operator notifies the commissioner at such time as the permit requires;

b. the additional well satisfies the criteria in §309.M.1 and meets the requirements specified in the permit under §309.M.2; and

c. the cumulative effects of drilling and operation of additional hydrocarbon storage wells are considered by the commissioner during evaluation of the area permit application and are acceptable to the commissioner.

4. If the commissioner determines that any well constructed pursuant to §309.M.3 does not satisfy any of the requirements of §309.M.3.a and b, the commissioner may modify the permit under §311.K.3, terminate under §311.K.6, or take enforcement action. If the commissioner determines that cumulative effects are unacceptable, the permit may be modified under §311.K.3.

N. Recordation of Notice of Existing Solution-Mined Caverns. The owner or operator of an existing solution-mined storage cavern shall record a certified survey plat of the well location for the cavern in the mortgage and conveyance records of the parish in which the property is located. Such notice shall be recorded no later than six months after the effective date of these rules and the owner or operator shall furnish a date/file -stamped copy of the recorded notice to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

O. Additional Conditions. The Office of Conservation may, on a case-by-case basis, impose any additional conditions or requirements as are necessary to protect the environment, the health, safety and welfare of the public, underground sources of drinking waters, oil, gas, or other mineral deposits (excluding the salt), and preserve the integrity of the salt dome.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§311. Permitting Process

A. Applicability. This Section has procedures for issuing and transferring permits to operate a hydrocarbon storage well and cavern. Any person required to have a permit shall apply to the Office of Conservation as stipulated in §305. The Office of Conservation shall not issue a permit before receiving an application form and any required supplemental information showing compliance with these rules and regulations, and that is administratively and technically complete to the satisfaction of the Office of Conservation.

B. Notice of Intent to File Application

1. The applicant shall make public notice that a permit application is proposed for filing with the Office of Conservation. A notice of intent shall be published at least 30 days but not more than 180 days before filing the permit application with the Office of Conservation. Without exception, the applicant shall publish a new notice of intent if the application is not received by the Office of Conservation within the filing period.

2. The notice shall be published once in the legal advertisement sections in the official state journal and in the official journal of the parish of the proposed project location.

The cost for publishing the notices is the responsibility of the applicant and shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility to be regulated by the permit;
- b. the geographic location of the proposed project;
- c. name and address of the regulatory agency to process the permit action where interested persons may obtain information concerning the application or permit action; and
- d. a brief description of the business conducted at the facility or activity described in the permit application.

3. The applicant shall submit the proof of publication of the notice of intent when submitting the application.

C. Application Submission and Review

1. The applicant shall complete, sign, and submit one original paper application form, with required attachments and documentation, and one copy of the same to the Office of Conservation. The complete application shall contain all information to show compliance with applicable state laws and these rules and regulations. In addition to submitting the application on paper, the applicant shall submit an exact duplicate of the paper application in an electronic format approved by the commissioner. The commissioner may request additional paper copies of the application, either in its entirety or in part, as needed. The electronic version of the application shall contain the following certification statement.

"This document is an electronic version of the application titled (Insert Document Title) dated (Insert Application Date). This electronic version is an exact duplicate of the paper copy submitted in (Insert the Number of Volumes Comprising the Full Application) to the Louisiana Office of Conservation."

2. The applicant shall be notified if a representative of the Office of Conservation decides that a site visit is necessary for any reason in conjunction with the processing of the application. Notification may be either oral or written and shall state the reason for the visit.

3. If the Office of Conservation deems an application to be incomplete, deficient of information, or requires additional data, a notice of application deficiency indicating the information necessary to make the application complete shall be transmitted to the applicant.

4. The Office of Conservation shall deny an application if an applicant fails, refuses, is unable to respond adequately to the notice of application deficiency, or if the Office of Conservation determines that the proposed activity cannot be conducted safely.

a. The Office of Conservation shall notify the applicant by certified mail of the decision denying the application.

b. The applicant may appeal the decision to deny the application in a letter to the commissioner who may call a public hearing through §311.D.

D. Public Hearing Requirements. A public hearing for new well applications shall not be scheduled until administrative and technical review of an application has been completed to the satisfaction of the Office of Conservation.

1. Public Notice of Permit Actions

a. Upon acceptance of a permit application as complete and meeting the administrative and technical requirements of these rules and regulations, the

commissioner shall give public notice that the following actions have occurred:

- i. an application has been received;
 - ii. a draft permit has been prepared under §311.E;
- and
- iii. a public hearing has been scheduled under §311.D.
 - b. No public notice or public hearing is required for additional wells drilled or for conversion under an approved area permit or when a request for permit modification, revocation and reissuance, or termination is denied under §311.K.

2. Public Notice by Office of Conservation

a. Public notice shall be published by the Office of Conservation in the legal advertisement section of the official state journal and the official journal of the parish of the proposed project location not less than 10 days before the scheduled hearing.

b. The Office of Conservation shall provide notice of the scheduled public hearing by forwarding a copy of the notice by mail or e-mail to:

- ii. the applicant;
- iii. all property owners within 1320 feet of the hydrocarbon storage facility's property boundary;
- iv. operators of existing projects located on or within the salt stock of the proposed project;
- v. United States Environmental Protection Agency;
- vi. Louisiana Department of Wildlife and Fisheries;
- vii. Louisiana Department of Environmental Quality;
- viii. Louisiana Office of Coastal Management;
- ix. Louisiana Office of Conservation, Pipeline Division;
- x. Louisiana Department of Culture, Recreation and Tourism, Division of Archaeology;
- xii. the governing authority for the parish of the proposed project; and
- xiii. any other interested parties.

3. Public Notice Contents. The public notices shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility or activity regulated by the permit;
- b. name and address of the regulatory agency processing the permit action;
- c. name, address, and phone number of a person within the regulatory agency where interested persons may obtain information concerning the application or permit action;
- d. a brief description of the business conducted at the facility or activity described in the permit application;
- e. a statement that a draft permit has been prepared under §311.E;
- f. a brief description of the public comment procedures;
- g. a brief statement of procedures whereby the public may participate in the final permit decision;
- h. the time, place, and a brief description of the nature and purpose of the public hearing;
- i. a reference to the date of any previous public notices relating to the permit;

j. any additional information considered necessary or proper by the commissioner.

4. Application Availability for Public Review

a. The applicant shall file at least one copy of the complete permit application with:

i. the local governing authority of the parish of the proposed project location; and

ii. in a public library in the parish of the proposed project location.

b. The applicant shall deliver copies of the application to the aforementioned locations before the public notices are published in the respective journals.

E. Draft Permit. The Office of Conservation shall prepare a draft permit after an application is determined to be complete. Draft permits shall be publicly noticed and made available for public comment.

F. Fact Sheet

1. The Office of Conservation shall prepare a fact sheet for every draft permit. It shall briefly set forth principal facts and significant factual, legal, and policy questions considered in preparing the draft permit.

2. The fact sheet may include:

a. a brief description of the type of facility or activity that is the subject of the draft permit or application;

b. the type and proposed quantity of material to be injected;

c. a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provision;

d. a description of the procedures for reaching a final decision on the draft permit or application including the beginning and ending date of the public comment period, the address where comments shall be received, and any other procedures whereby the public may participate in the final decision;

e. reasons why any requested variances or alternative to required standards do or do not appear justified;

f. procedures for requesting a hearing and the nature of that hearing; and

g. the name and telephone number of a person within the permitting agency to contact for additional information.

3. The fact sheet shall be distributed to the permit applicant and to any interested person on request.

G. Public Hearing

1. The Office of Conservation shall fix a time, date, and location for a public hearing. The public hearing shall be held in the parish of the proposed project location. The cost of the public hearing is set by LAC 43:XIX.Chapter 7 (Fees, as amended) and is the responsibility of the applicant.

2. The public hearing shall be fact finding in nature and not subject to the procedural requirements of the Louisiana Administrative Procedure Act. All public hearings shall be publicly noticed as required by these rules and regulations.

3. At the hearing, any person may make oral statements or submit written statements and data concerning the application or permit action being the basis of the hearing. Reasonable limits may be set upon the time allowed for oral statements; therefore, submission of written

statements may be required. The hearing officer may extend the public comment period by so stating before the close of the hearing.

4. A transcript shall be made of the hearing and such transcript shall be available for public review.

H. Public Comments, Response to Comments, and Permit Issuance

1. Any interested person may submit written comments concerning the permitting activity during the public comment period. All comments pertinent and significant to the permitting activity shall be considered in making the final permit decision.

2. The Office of Conservation shall issue a response to all pertinent and significant comments as an attachment to and at the time of final permit decision. The final permit with response to comments shall be made available to the public. The response shall:

a. specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

b. briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period or hearing.

3. The Office of Conservation may issue a final permit decision within 30 days following the close of the public comment period; however, this time may be extended due to the nature, complexity, and volume of public comments received.

4. A final permit decision shall be effective on the date of issuance.

5. The owner or operator of a solution-mined storage cavern permit shall record a certified survey plat and final permit in the mortgage and conveyance records of the parish in which the property is located. A date/file stamped copy of the plat and final permit is to be furnished to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

6. Approval or the granting of a permit to construct or convert a hydrocarbon storage well shall be valid for one year from its effective date and if not completed in that time, the permit shall be null and void. The permittee may request an extension of this one year requirement; however, the commissioner shall approve the request only for extenuating circumstances and only if the conditions existing at the time the permit was issued have not changed. The permittee shall have the burden of proving claims of extenuating circumstances.

I. Permit Application Denial

1. The Office of Conservation may refuse to issue, reissue, or reinstate a permit or authorization if an applicant or operator has delinquent, finally determined violations of the Office of Conservation or unpaid penalties or fees, or if a history of past violations demonstrates the applicant's or operator's unwillingness to comply with permit or regulatory requirements.

2. If an application is denied, the applicant may request a review of the Office of Conservation's decision to deny the permit application. Such request shall be made in

writing and shall contain facts or reasons supporting the request for review.

3. Grounds for application denial review shall be limited to the following reasons:

a. the decision is contrary to the laws of the state, applicable regulations, or evidence presented in or as a supplement to the permit application;

b. the applicant has discovered since the permit application public hearing or permit denial, evidence important to the issues that the applicant could not with due diligence have obtained before or during the initial permit application review;

c. there is a showing that issues not previously considered should be examined so as to dispose of the matter; or

d. there is other good ground for further consideration of the issues and evidence in the public interest.

J. Permit Transfer

1. Applicability. A permit may be transferred to a new owner or operator only upon written approval from the Office of Conservation. Written approval must clearly show that the permit has been transferred. It is a violation of these rules and regulations to operate a hydrocarbon storage well without a permit or other authorization if a person attempting to acquire a permit transfer allows operation of the hydrocarbon storage well before receiving written approval from the Office of Conservation.

2. Procedures

a. The proposed new owner or operator must apply for and receive an operator code by submitting a completed organization report (Form OR-1), or subsequent form, to the Office of Conservation.

b. The current operator shall submit an application for permit transfer at least 30 days before the proposed permit transfer date. The application shall contain the following:

i. name and address of the proposed new owner or operator;

ii. date of proposed permit transfer; and

iii. a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, financial responsibility, and liability between them.

c. If no agreement described in Subparagraph b.iii. above is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation will shift from the existing operator to the new operator on the date the transfer is approved.

d. The new operator shall submit an application for a change of operator using Form MD-10-R-A, or subsequent form, to the Office of Conservation containing the signatories of §305.D and E, along with the appropriate filing fee.

e. The new operator shall submit evidence of financial responsibility under §309.B.

f. If a person attempting to acquire a permit causes or allows operation of the facility before approval by the commissioner, it shall be considered a violation of these rules for operating without a permit or other authorization.

g. If the commissioner does not notify the existing operator and the proposed new owner or operator of his

intent to modify or revoke and reissue the permit under §309.K.3.b, the transfer is effective on the date specified in the agreement mentioned in Subparagraph b.iii. above.

h. Any additional information as may be required to be submitted by these regulations or the Office of Conservation.

K. Permit Suspension, Modification, Revocation and Reissuance, Termination. This subsection sets forth the standards and requirements for applications and actions concerning suspension, modification, revocation and reissuance, termination, and renewal of permits. A draft permit must be prepared and other applicable procedures must be followed if a permit modification satisfies the criteria of this subsection. A draft permit, public notice, or public participation is not required for minor permit modifications defined in §311.K.6.

1. Permit Actions

a. The permit may be suspended, modified, revoked and reissued, or terminated for cause.

b. The operator shall furnish the Office of Conservation within 30 days, any information that the Office of Conservation may request to determine whether cause exists for suspending, modifying, revoking and reissuing, or terminating a permit, or to determine compliance with the permit. Upon request, the operator shall furnish the Office of Conservation with copies of records required to be kept by the permit.

c. The Office of Conservation may, upon its own initiative or at the request of any interested person, review any permit to determine if cause exists to suspend, modify, revoke and reissue, or terminate the permit for the reasons specified in §311.K.2, 3, 4, 5, and 6. All requests by interested persons shall be in writing and shall contain only factual information supporting the request.

d. If the Office of Conservation decides the request is not justified, the person making the request shall be sent a brief written response giving a reason for the decision. Denials of requests for suspension, modification, revocation and reissuance, or termination are not subject to public notice, public comment, or public hearing.

e. If the Office of Conservation decides to suspend, modify, or revoke and reissue a permit under §311.K.2, 3, 4, 5, and 6, additional information may be requested and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Office of Conservation shall require the submission of a new application.

f. The suitability of an existing well or salt cavern location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards suggest continued operation at the site endangers the environment, or the health, safety and welfare of the public that was unknown at the time of permit issuance. If the hydrocarbon storage well location is no longer suitable for its intended purpose, it may be ordered closed according to applicable sections of these rules and regulations.

2. Suspension of Permit. The Office of Conservation may suspend the operator's right to store hydrocarbons until violations are corrected. If violations are corrected, the Office of Conservation may lift the suspension. Suspension of a permit or subsequent corrections of the causes for the

suspension by the operator shall not preclude the Office of Conservation from terminating the permit, if necessary. The Office of Conservation shall issue a notice of violation (NOV) to the operator that lists the specific violations of the permit or these regulations. If the operator fails to comply with the NOV by correcting the cited violations within the date specified in the NOV, the Office of Conservation shall issue a compliance order requiring the violations be corrected within a specified time and may include an assessment of civil penalties. If the operator fails to take corrective action within the time specified in the compliance order, the Office of Conservation shall assess a civil penalty, and shall suspend, revoke, or terminate the permit.

3. Modification or Revocation and Reissuance of Permits. The following are causes for modification and may be causes for revocation and reissuance of permits.

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

b. Information. The Office of Conservation has received information pertinent to the permit. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. Cause shall include any information indicating that cumulative effects on the environment, or the health, safety and welfare of the public are unacceptable.

c. New Regulations

i. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued and conformance with the changed standards or regulations is necessary for the protection of the environment, or the health, safety and welfare of the public. Permits may be modified during their terms when:

(a) the permit condition to be modified was based on a promulgated regulation or guideline;

(b) there has been a revision, withdrawal, or modification of that portion of the regulation or guideline on which the permit condition was based; or

(c) an operator requests modification within 90 days after *Louisiana Register* notice of the action on which the request is based.

ii. The permit may be modified as a minor modification without providing for public comment when standards or regulations on which the permit was based have been changed by withdrawal of standards or regulations or by promulgation of amended standards or regulations which impose less stringent requirements on the permitted activity or facility and the operator requests to have permit conditions based on the withdrawn or revised standards or regulations deleted from his permit.

iii. For judicial decisions, a court of competent jurisdiction has remanded and stayed Office of Conservation regulations or guidelines and all appeals have been exhausted, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was

based and a request is filed by the operator to have permit conditions based on the remanded or stayed standards or regulations deleted from his permit.

d. Compliance Schedules. The Office of Conservation determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the operator has little or no control and for which there is no reasonable available remedy.

4. Causes for Modification or Revocation and Reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit.

a. Cause exists for termination under §311.K.6, and the Office of Conservation determines that modification or revocation and reissuance is appropriate.

b. The Office of Conservation has received notification of a proposed transfer of the permit and the transfer is determined not to be a minor permit modification. A permit may be modified to reflect a transfer after the effective date but will not be revoked and reissued after the effective date except upon the request of the new operator.

5. Facility Siting. Suitability of an existing facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that continued operations at the site pose a threat to the health or safety of persons or the environment that was unknown at the time of the permit issuance. A change of injection site or facility location may require modification or revocation and issuance as determined to be appropriate by the commissioner.

6. Minor Modifications of Permits. The Office of Conservation may modify a permit to make corrections or allowances for changes in the permitted activity listed in this subsection without issuing a draft permit and providing for public participation. Minor modifications may only:

a. correct administrative or make informational changes;

b. correct typographical errors;

c. amend the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities;

d. change an interim compliance date in a schedule of compliance, provided the new date does not interfere with attainment of the final compliance date requirement;

e. allow for a change in ownership or operational control of a hydrocarbon storage well where the Office of Conservation determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Office of Conservation;

f. change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the commissioner, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification;

g. change construction requirements or plans approved by the Office of Conservation provided that any such alteration is in compliance with these rules and regulations. No such changes may be physically incorporated into construction or conversion of the

hydrocarbon storage well or cavern without written approval from the Office of Conservation; or

h. amend a closure or post-closure plan.

7. Termination of Permits

a. The Office of Conservation may terminate a permit during its term for the following causes:

i. noncompliance by the operator with any condition of the permit;

ii. the operator's failure in the application or during the permit issuance process to fully disclose all relevant facts, or the operator's misrepresentation of any relevant facts at any time; or

iii. a determination that continued operation of the permitted activity cannot be conducted in a way that is protective of the environment, or the health, safety and welfare of the public.

b. If the Office of Conservation decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit that follows the same procedures as any draft permit prepared under §311.E. The Office of Conservation may alternatively decide to modify or revoke and reissue a permit for the causes in §311.K.7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§313. Site Assessment

A. Applicability. This Section applies to all applicants, owners, or operators of hydrocarbon storage wells and caverns. The applicant, owner, or operator shall be responsible for showing that the hydrocarbon storage operation shall be accomplished using good engineering and geologic practices for hydrocarbon storage operations to preserve the integrity of the salt stock and overlying sediments. In addition to all applicants showing this in their application and as part of the compliance review found in §309.K, the commissioner shall require any owner or operator of a hydrocarbon storage well to provide the same or similar information required in this Section. This shall include, but not be limited to:

1. an assessment of the engineering, geological, geomechanical, geochemical, geophysical properties of the salt stock;

2. stability of salt stock and overlying and surrounding sediments;

3. stability of the cavern design (particularly regarding its size, shape, depth, and operating parameters);

4. the amount of separation between the cavern of interest and adjacent caverns and structures within the salt stock; and

5. the amount of separation between the outermost cavern wall and the periphery of the salt stock;

6. an assessment of well information and oil and gas activity within the vicinity of the salt dome.

B. Geological Studies and Evaluations. The applicant, owner, or operator shall do a thorough geological, geophysical, geomechanical, and geochemical evaluation of the salt stock to determine its suitability for hydrocarbon storage, stability of the cavern under the proposed set of operating conditions, and where applicable, the structural integrity of the salt stock between an adjacent cavern and salt periphery under the proposed set of operating

conditions. A listing of data or information used to characterize the structure and geometry of the salt stock shall be included.

1. Where applicable, the evaluation shall include, but should not be limited to:

a. geologic mapping of the structure of the salt stock and any cap rock;

b. geologic history of salt movement;

c. an assessment of the impact of possible anomalous zones (salt spines, shear planes, etc.) on the hydrocarbon storage well or cavern;

d. deformation of the cap rock and strata overlying the salt stock;

e. investigation of the upper salt surface and adjacent areas involved with salt dissolution;

f. cap rock formation and any non-vertical salt movement.

2. The applicant shall perform a thorough hydrogeologic study on strata overlying the salt stock to determine the occurrence of the lowermost underground source of drinking water immediately above and near the salt stock.

3. The applicant shall investigate regional tectonic activity and the potential impact (including ground subsidence) of the project on surface and subsurface resources.

4. The proximity of all existing and proposed hydrocarbon storage caverns to the periphery of the salt stock and to manmade structures within the salt stock shall be demonstrated to the Office of Conservation at least once every five years (see §309.K) by providing the following:

a. an updated structure contour map of the salt stock on a scale no smaller than 1 inch to 500 feet. The updated map should make use of all available data. The horizontal configuration of the salt cavern should be shown on the structure map and reflect the caverns' maximum lateral extent as determined by the most recent sonar caliper survey; and

b. vertical cross sections of the salt caverns showing their outline and position within the salt stock. Cross-sections should be oriented to indicate the closest approach of the salt cavern wall to the periphery of the salt stock. The outline of the salt cavern should be based on the most recent sonar caliper survey.

C. Core Sampling

1. At least one well at the site of the hydrocarbon storage well (or the salt dome) shall be or shall have been cored over sufficient depth intervals to yield representative samples of the subsurface geologic environment. This shall include coring of the salt stock and may include coring of overlying formations, including any cap rock. Cores should be obtained using the whole core method. Core acquisition, core handling, and core preservation shall be done according to standard field sampling practices considered acceptable for laboratory tests of recovered cores.

2. Data from previous coring projects may be used instead of actual core sampling provided the data is specific to the salt dome of interest. If site-specific data is unavailable, data may be obtained from sources that are not specific to the area as long as the data can be shown to closely approximate the properties of the salt dome of interest. It shall be the responsibility of the applicant to make

a satisfactory demonstration that data obtained from other sources are applicable to the salt dome of interest.

D. Core Analyses and Laboratory Tests. Analyses and tests shall consider the characteristics of the injected materials and should provide data on the salt's geomechanical, geophysical, geochemical, mineralogical properties, microstructure, and where necessary, potential for adjacent cavern connectivity, with emphasis on cavern shape and the operating conditions. All laboratory tests, experimentation, and numeric modeling shall be conducted using methods that simulate the proposed operating conditions of the cavern. Test methods shall be selected to define the deformation and strength properties and characteristics of the salt stock under cavern operating conditions.

E. Area-of-Review. A thorough evaluation shall be undertaken of both surface and subsurface activities in the defined area-of-review of the individual hydrocarbon storage well or project area (area permit) that may influence the integrity of the salt stock, hydrocarbon storage well, and cavern, or contribute to the movement of injected fluids outside the cavern, wellbore, or salt stock.

1. Surface Delineation

a. The area-of-review for individual hydrocarbon storage wells shall be a fixed radius around the wellbore of not less than 1320 feet.

b. The area-of-review for wells in a hydrocarbon storage project area (area permit), shall be the project area plus a circumscribing area the width of which is not less than 1320 feet.

c. Exception shall be noted as in Subparagraphs 2.c and d below.

2. Subsurface Delineation. At a minimum, the following shall be identified within the area-of-review:

a. all known active, inactive, and abandoned wells within the area-of-review with known depth of penetration into the cap rock or salt stock;

b. all known water wells within the area-of-review;

c. all salt caverns within the salt stock regardless of use, depth of penetration, or distance to the proposed hydrocarbon storage well or cavern;

d. all conventional (dry or room and pillar) mining activity either active or abandoned occurring anywhere within the salt stock regardless of distance to the proposed hydrocarbon storage well or cavern.

F. Corrective Action

1. For manmade structures identified in the area-of-review that penetrate the salt stock and are not properly constructed, completed, or plugged and abandoned, the applicant shall submit a corrective action plan consisting of such steps, procedures, or modifications as are necessary to prevent the movement of fluids outside the cavern or into underground sources of drinking water.

a. Where the plan is adequate, the provisions of the corrective action plan shall be incorporated into the permit as a condition.

b. Where the plan is inadequate, the Office of Conservation shall require the applicant to revise the plan, or prescribe a plan for corrective action as a condition of the permit, or the application shall be denied.

2. Any permit issued for an existing hydrocarbon storage well for which corrective action is required shall

include a schedule of compliance for complete fulfillment of the approved corrective action procedures. If the required corrective action is not completed as prescribed in the schedule of compliance, the permit shall be suspended, modified, revoked and possibly reissued, or terminated according to these rules and regulations.

3. No permit shall be issued for a new hydrocarbon storage well until all required corrective action obligations have been fulfilled.

4. The commissioner may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not cause the movement of fluids into a underground source of drinking water through any improperly completed or abandoned well within the area-of-review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other corrective action has been taken.

5. When setting corrective action requirements for hydrocarbon storage wells, the commissioner shall consider the overall effect of the project on the hydraulic gradient in potentially affected underground sources of drinking water, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made the corrective action is not necessary, the monitoring program required in §323 shall be designed to verify the validity of such determination.

6. In determining the adequacy of proposed corrective action and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the commissioner:

- a. nature and volume of injection fluid;
- b. nature of native fluids or by-products of injection;
- c. potentially affected population;
- d. geology;
- e. hydrology;
- f. history of the injection operation;
- g. completion and plugging records;
- h. abandonment procedures in effect at the time the well was abandoned; and
- i. hydraulic connections with underground sources of drinking water.

7. The Office of Conservation may prescribe additional requirements for corrective action beyond those submitted by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§315. Cavern Design and Spacing Requirements

A. This Section provides general standards for design of caverns to ensure that project development can be conducted in a reasonable, prudent, and a systematic manner and shall stress physical and environmental safety. The owner or operator shall continually review the design throughout the construction and operation phases taking into consideration pertinent additional detailed subsurface information and shall include provisions for protection from damage caused by hydraulic shock. If necessary, the original development and operational plans shall be modified to conform to good engineering practices.

B. Cavern Spacing Requirements

1. Property Boundary

a. Existing Hydrocarbon Storage Caverns. No part of a hydrocarbon storage cavern permitted as of the date these regulations are promulgated shall extend closer than 100 feet to the property of others without consent of the owner(s). Continued operation without this consent of an existing hydrocarbon storage cavern within 100 feet to the property of others may be allowed as follows.

i. The operator of the cavern shall make a good faith effort to provide notice in a form and manner approved by the commissioner to the adjacent property owner(s) of the location of its cavern.

ii. The commissioner shall hold a public hearing at Baton Rouge if an adjacent owner whose property line is within 100 feet objects to the cavern's continued operation. Following the public hearing the commissioner may approve the cavern's continued operation upon a determination that the continued operation of the cavern has no adverse effects to the rights of the adjacent property owner(s).

iii. If no objection from an adjacent property owner is received within 30 days of the notice provided in accordance with Subparagraph 1.a.i above, then the commissioner may approve the continued operation of the cavern administratively.

b. New Hydrocarbon Storage Caverns. No part of a newly permitted hydrocarbon storage cavern shall extend closer than 100 feet to the property of others without the consent of the owner(s).

2. Adjacent Structures within the Salt. As measured in any direction, the minimum separation between walls of adjacent caverns or between the walls of the cavern and any manmade structure within the salt stock shall not be less than 200 feet. Caverns must be operated in a manner that ensures the walls between any cavern and any other manmade structure maintain the minimum separation of 200 feet. For hydrocarbon storage caverns permitted prior to the effective date of these regulations and which are already within 200 feet of any other manmade structure within the salt stock, the commissioner of conservation may approve continued operation upon a proper showing by the owner or operator that the cavern is capable of continued safe operations.

3. Salt Periphery

a. Without exception or variance to these rules and regulations, at no time shall the minimum separation between the cavern walls at any point and the periphery of the salt stock for a newly permitted hydrocarbon storage cavern be less than 300 feet.

b. An existing hydrocarbon storage cavern with less than 300 feet of salt separation at any point between the cavern walls and the periphery of the salt stock shall provide the Office of Conservation with an enhanced monitoring plan that has provisions for ongoing monitoring of the structural stability of the cavern and salt through methods that may include, but are not limited to, increased frequency of sonar caliper surveys, vertical seismic profiles, micro-seismic monitoring, increased frequency of subsidence monitoring, mechanical integrity testing, continuous cavern pressure data monitoring, etc. A combination of enhanced monitoring methods may be proposed where appropriate.

Once approved, the owner or operator shall implement the enhanced monitoring plan.

c. Without exception or variance to these rules and regulations, an existing hydrocarbon storage cavern with cavern walls 100 feet or less from the periphery of the salt stock shall be removed from hydrocarbon storage service immediately and permanently. An enhanced monitoring plan of Subparagraph b above shall be prepared and submitted to the Office of Conservation. Once approved, the owner or operator shall implement the enhanced monitoring plan.

C. Cavern Coalescence. The Office of Conservation may permit the use of coalesced caverns for hydrocarbon storage, but only for hydrocarbons that are liquid at standard temperature and pressure. It shall be the duty of the applicant, owner, or operator to demonstrate that operation of coalesced caverns under the proposed cavern operating conditions can be accomplished in a physical and environmentally safe manner and that the stability and integrity of the cavern and salt stock shall not be compromised. The intentional subsurface coalescing of adjacent caverns must be requested by the applicant, owner, or operator in writing and be approved by the Office of Conservation before beginning or resumption of hydrocarbon storage operations. If the design of adjacent caverns should include approval for the subsurface coalescing of adjacent caverns, the minimum spacing requirement of §315.B.2 shall not apply to the coalesced caverns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§317. Well Construction and Completion

A. General Requirements

1. All materials and equipment used in the construction of the hydrocarbon storage well and related appurtenances shall be designed and manufactured to exceed the operating requirements of the specific project. Consideration shall be given to depth and lithology of all subsurface geologic zones, corrosiveness of formation fluids, hole size, anticipated ranges and extremes of operating conditions, subsurface temperatures and pressures, type and grade of cement, and projected life of the hydrocarbon storage well, etc.

2. All hydrocarbon storage wells and caverns shall be designed, constructed, completed, and operated to prevent the escape of injected materials out of the salt stock, into or between underground sources of drinking water, or otherwise create or cause pollution or endanger the environment or public safety. All phases of design, construction, completion, and testing shall be prepared and supervised by qualified personnel.

a. Where the hydrocarbon storage well penetrates an underground source of drinking water in an area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

b. The following criteria shall be considered in determining the number, location, construction, and frequency of monitoring of any monitor wells:

- i. the population relying on the USDW affected or potentially affected by the injection operation;
- ii. the proximity of the hydrocarbon storage operation to points of withdrawal of drinking water;
- iii. the local geology and hydrology;
- iv. the operating pressures and whether a negative pressure gradient is being maintained;
- v. the nature and volume of the injected fluid, the formation water, and the process by-products; and
- vi. the injected fluid density.

B. Open Borehole Surveys

1. Open hole wireline surveys that delineate subsurface lithologies, formation tops (including top of cap rock and salt), formation fluids, formation porosity, and fluid resistivities shall be performed on all new wells from total well depth to either ground surface or base of conductor pipe. Wireline surveys shall be presented with gamma-ray and, where applicable, spontaneous potential curves. All surveys shall be presented on a scale of 1 inch to 100 feet and a scale of 5 inches to 100 feet. A descriptive report interpreting the results of such logs and tests shall be prepared and submitted to the commissioner.

2. Gyroscopic multi-shot surveys of the borehole shall be taken at intervals not to exceed every 100 feet of drilled borehole.

3. Where practicable, caliper logging to determine borehole size for cement volume calculations shall be performed before running casings.

4. The owner or operator shall submit all wireline surveys as one paper copy and an electronic version in a format approved by the commissioner.

C. Casing and Cementing. Except as specified below, the wellbore of the hydrocarbon storage well shall be cased, completed, and cemented according to rules and regulations of the Office of Conservation and good industry engineering practices for wells of comparable depth that are applicable to the same locality of the cavern. Design considerations for casings and cementing materials and methods shall address the nature and characteristics of the subsurface environment, the nature of injected materials, the range of conditions under which the well, cavern, and facility shall be operated, and the expected life of the well including closure and post-closure.

1. Cementing shall be by the pump-and-plug method or another method approved by the Office of Conservation and shall be circulated to the surface. Circulation of cement may be done by staging.

a. For purposes of these rules and regulations, circulated (cemented) to the surface shall mean that actual cement returns to the surface were observed during the primary cementing operation. A copy of the cementing company's job summary or cementing ticket indicating returns to the surface shall be submitted as part of the pre-operating requirements of §325.

b. If returns are lost during cementing, the owner or operator shall have the burden of showing that sufficient cement isolation is present to prevent the upward movement of injected material into zones of porosity or transmissive permeability in the overburden along the wellbore and to protect underground sources of drinking water.

2. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- a. depth of the storage zone;
- b. injection pressure, external pressure, internal pressure, axial loading, etc.;
- c. borehole size;
- d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, construction material, etc.);
- e. corrosiveness of injected fluids and formation fluids;
- f. lithology of subsurface formations penetrated;
- g. type and grade of cement.

3. Surface casing shall be set to a depth below the base of the lowermost underground source of drinking water and shall be cemented to ground surface where practicable.

4. At a minimum, all hydrocarbon storage wells shall be dually cased from the surface into the salt, one casing string being an intermediate string, the other being the final cemented string. The surface casing shall not be considered one of the two casings.

5. The final cemented casing shall be set a minimum distance of 300 feet into the salt and shall make use of a sufficient number of casing centralizers.

6. The following applies to wells existing in caverns before the effective date of these rules and regulations. If the design of the well or cavern precludes having distinct intermediate and final casing seats cemented into the salt, the wellbore shall be cased with two concentric casings run from the surface of the well to a minimum distance of 300 feet into the salt. The inner casing shall be cemented from its base to surface.

7. All cemented casings shall be cemented from their respective casing seats to the surface when practicable; however, in every case, casings shall be cemented a sufficient distance to prevent migration of the stored products into zones of porosity or permeability in the overburden.

D. Casing and Casing Seat Tests. When performing tests under this subsection, the owner or operator shall monitor and record the tests by use of a surface readout pressure gauge and a chart or a digital recorder. All instruments shall be properly calibrated and in good working order. If there is a failure of the required tests, the owner or operator shall take necessary corrective action to obtain a passing test.

1. Casing. After cementing each casing, but before drilling out the respective casing shoe, all casings will be hydrostatically pressure tested to verify casing integrity and the absence of leaks. The stabilized test pressure applied at the well surface will be calculated such that the pressure gradient at the depth of the respective casing shoe will not be less than 0.7 PSI/FT of vertical depth or greater than 0.9 PSI/FT of vertical depth. All casing test pressures will be maintained for one-hour after stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

2. Casing Seat. The casing seat and cement of the intermediate and production casings will each be hydrostatically pressure tested after drilling out the casing

shoe. At least 10 feet of formation below the respective casing shoes will be drilled before the test.

a. For all casings below the surface casing, excluding the final cemented casing, the stabilized test pressure applied at the well surface will be calculated such that the pressure at the casing shoe will not be less than the 85 percent of the predicted formation fracture pressure at that depth. The test pressures will be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

b. For the final cemented casing, the test pressure applied at the surface will be the greater of the maximum predicted salt cavern operating pressure or a pressure gradient of 0.85 PSI/FT of vertical depth calculated with respect to the depth of the casing shoe. The test pressures will be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

3. Casing or casing seat test pressures shall never exceed a pressure gradient equivalent to 0.90 PSI/FT of vertical depth at the respective casing seat or exceed the known or calculated fracture gradient of the appropriate subsurface formation. The test pressure shall never exceed the rated burst or collapse pressures of the respective casings.

E. Cased Borehole Surveys. A cement bond with variable density log (or similar cement evaluation tool) and a temperature log shall be run on all casings. The Office of Conservation may consider requests for allowances for wireline logging in large diameter casings or justifiable special conditions. A descriptive report interpreting the results of such logs shall be prepared and submitted to the commissioner.

1. It shall be the duty of the well applicant, owner or operator to prove adequate cement isolation on all cemented casings. Remedial cementing shall be done before proceeding with further well construction, completion, or conversion if adequate cement isolation between the hydrocarbon storage well and subsurface formations cannot be demonstrated.

2. A casing inspection log (or similar log) shall be run on the final cemented casing.

3. When submitting wireline surveys, the owner or operator shall submit one paper copy and an electronic copy in a format approved by the commissioner.

F. Hanging Strings. Hanging strings shall be designed with a collapse, burst, and tensile strength rating conforming to all expected operating conditions, including flow induced vibrations. The design shall also consider the physical and chemical characteristics of fluids placed into and withdrawn from the cavern.

G. Wellhead Components and Related Connections. All wellhead components, valves, flanges, fittings, flowlines, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. Selection and design criteria for

components shall consider the physical and chemical characteristics of fluids placed into and withdrawn from the cavern under the specific range of operating conditions, including flow induced vibrations. The fluid withdrawal side of the wellhead shall be rated for the same pressure as the fluid injection side. All components and related connections shall be periodically inspected by the well operator and maintained in good working order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§319. Operating Requirements

A. Cavern Roof. Without exception or variance to these rules and regulations, no cavern shall be used for hydrocarbon storage if the cavern roof has grown above the top of the salt stock. The operation of an already permitted storage cavern shall cease and shall not be allowed to continue if information becomes available that shows this condition exists. The Office of Conservation may order the hydrocarbon storage well and cavern removed from storage service according to an approved closure and post-closure plan.

B. Remedial Work. No remedial work or repair work of any kind shall be done on the hydrocarbon storage well or cavern without prior authorization from the Office of Conservation. The provision for prior authorization shall also extend to doing mechanical integrity pressure and leak tests and sonar caliper surveys; however, a work permit is not required in order to conduct interface surveys. The owner, operator, or its agent shall submit a valid work permit request form (Form UIC-17 or successor). Before beginning well or cavern remedial work, the pressure in the cavern shall be relieved, as practicable.

C. Well Recompletion—Casing Repair. The following applies to hydrocarbon storage wells where remedial work results from well upgrade, casing wear, or similar condition. For each Paragraph below, a casing inspection log shall be done on the entire length of the innermost cemented casing in the well before doing any casing upgrade or repair. Authorization from the Office of Conservation shall be obtained before beginning any well recompletion, repair, upgrade, or closure. A hydrocarbon storage well that cannot be repaired or upgraded shall remain out-of-service and be closed according to an approved closure and post-closure plan.

1. Liner. A liner may be used to recomplete or repair a well with severe casing damage. The liner shall be run from the well surface to the base of the innermost cemented casing. The liner shall be cemented over its entire length and shall be successfully pressure tested.

2. Casing Patch. Internal casing patches shall not be used to repair severely corroded or damaged casing. Casing patches shall only be used for repairing or covering isolated pitting, corrosion, or similar localized damage. The casing patch shall extend a minimum of 10 feet above and below the area being repaired. The entire casing shall be successfully pressure tested.

D. Multiple Well Caverns. No newly permitted well shall be drilled into an existing cavern until the cavern pressure has been relieved, as practicable, to 0 PSI measured at the surface.

E. Cavern Allowable Operating Pressure

1. The maximum and minimum surface injection pressures (gauge) for the storage well and cavern shall be determined after considering the geomechanical characteristics of the salt, the properties of the injected fluid, well and cavern design, and neighboring activities within salt stock.

2. The maximum and minimum allowable surface injection pressures shall be calculated at a depth referenced to the well's deepest cemented casing seat. The injection pressure at the wellhead shall be calculated to ensure that the pressure induced within the salt cavern during injection does not initiate fractures or propagate existing fractures in the salt. In no case shall the injection pressure initiate fractures in the confining zone or cause the migration of injected fluids out of the salt stock or into an underground source of drinking water.

3. When measured at the surface and calculated with respect to the appropriate reference depth, the maximum allowable cavern injection pressure shall not exceed a pressure gradient of 0.90 PSI/FT of vertical depth.

4. The hydrocarbon storage well shall not be operated at pressures above the maximum allowable injection pressure defined above, exceed the maximum allowable pressure as may be established by permit, or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods, including pressure pulsation peaks, abnormal operating conditions, well or cavern tests, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§321. Safety

A. Emergency Action Plan. A plan outlining procedures for facility personnel to follow in case of an emergency shall be prepared and submitted as part of the permit application. The plan shall contain emergency contact telephone numbers, procedures and specific information for facility personnel to respond to a release, upset, incident, accident, or other site emergency. A copy of the plan shall be kept at the facility and shall be reviewed and updated as needed.

B. Controlled Site Access. Access to hydrocarbon storage facilities shall be controlled by fencing or other means around the facility property. All points of entry into the facility shall be through by a lockable gate system.

C. Personnel. Personnel shall be on duty at the storage facility 24 hours a day. During periods of stored product injection or withdrawal, trained personnel shall be stationed at the storage well, facility's onsite local control room, or other facility control location at the storage site. If the storage facility chooses to use an offsite monitoring and control automated telemetry surveillance system, approved by the commissioner, provisions shall be made for trained personnel to be on-call at all times and 24-hours-a-day staffing of the facility may not be required.

D. Wellhead Protection and Identification

1. A barrier shall be installed and maintained around the storage wellhead as protection from physical or accidental damage by mobile equipment or trespassers.

2. An identifying sign shall be placed at the wellhead of each storage well and, at a minimum, shall include the operator's name, well/cavern name and number, well's state

serial number, section-township-range, and any other information required by the Office of Conservation. The sign shall be of durable construction with all lettering kept in a legible condition.

E. Valves and Flowlines

1. All valves, flowlines, flanges, fittings, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

2. All valves, flowlines for injection and withdrawal, and any other flowlines shall be designed to prevent pressures over maximum operating pressure from being exerted on the storage well and cavern and prevent backflow or escape of injected material. The fluid withdrawal side of the wellhead shall have the same pressure rating as the injection side.

3. All flowlines for injection and withdrawal connected to the wellhead shall be equipped with remotely operated shut-off valves and shall have manually operated positive shut-off valves at the wellhead. All remotely operated shut-off valves shall be fail-safe and tested and inspected according to §321.I.

F. Alarm Systems. Manual and automatically activated alarms shall be installed at all cavern facilities. All alarms shall be audible and visible from any normal work location within the facility. The alarms shall be maintained in proper working order. Automatic alarms designed to activate an audible and a visible signal shall be integrated with all pressure, flow, heat, fire, cavern overfill, leak sensors and detectors, emergency shutdown systems, or any other safety system. The circuitry shall be designed such that failure of a detector or sensor shall activate a warning.

G. Emergency Shutdown Valves. Manual and automatically actuated emergency shutdown valves shall be installed on all systems of cavern injection and withdrawal and any other flowline going into or out from each storage wellhead. All emergency shutdown valves shall be fail-safe and shall be tested and inspected according to §321.I.

1. Manual controls for emergency shutdown valves shall be designed to operate from a local control room, at storage wellhead, any remote monitoring and control location, and at a location that is likely to be accessible to emergency response personnel.

2. Automatic emergency shutdown valves shall be designed to actuate on detection of abnormal pressures of the injection system, abnormal increases in flow rates, responses to any heat, fire, cavern overfill, leak sensors and detectors, loss of pressure or power to the well, cavern, or valves, or any abnormal operating condition.

H. Vapor Detection. The operator shall develop and implement a plan as required in §323.D to detect the presence of combustible gases or any potentially ignitable substances in the atmosphere resulting from the storage operation.

1. A continuous flare or other safety system shall be installed at or near each brine pit or at any other location where the uncontrollable escape of liquefied gases are likely to occur and the flare shall be burned continuously when a liquefied gas is being injected into a cavern.

I. Safety Systems Test. The operator shall function-test all critical systems of control and safety at least once every six months. This includes testing of alarms, test tripping of emergency shutdown valves ensuring their closure times are within design specifications, and ensuring the integrity of all electrical, pneumatic, or hydraulic circuits. Tests results shall be documented and kept onsite for inspection by an agent of the Office of Conservation.

J. Safety Inspections

1. The operator shall conduct twice-yearly safety inspections and file with the commissioner a written report consisting of the inspection procedures and results within 30 days following the inspection. Such inspections shall be conducted during the winter and summer months of each year. The operator shall notify the commissioner at least five days prior to such inspections so that his representative may be present to witness the inspections. Inspections shall include, but not be limited to, the following:

- a. operations of all manual wellhead valves;
- b. operation of all automatic shut-in safety valves, including sounding or alarm devices;
- c. flare system installation or hydrocarbon filters;
- d. brine pits, tanks, firewalls, and related equipment;
- e. flowlines, manifolds, and related equipment;
- f. warning signs, safety fences, etc.

2. Representatives of the Office of Conservation may inspect the storage well and facility at any time during the storage facility regular working hours.

K. Spill Containment. Levees, booms, or other containment devices suitable to retain liquids released by accidental spillage shall surround the wellheads of caverns storing hydrocarbons that exist as liquids at ambient conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§323. Monitoring Requirements

A. Pressure Gauges, Pressure Sensors, Flow Sensors

1. Pressure gauges that show pressure on the fluid injection string, fluid withdrawal string, and any other string in the well shall be installed at each wellhead. Gauges shall be designed to read gauge pressure in 10 PSIG increments. All gauges shall be properly calibrated and shall always be maintained in good working order. The pressure valves onto which the pressure gauges are affixed shall have 1/2 inch female fittings.

2. Pressure sensors designed to actuate the automatic closure of all emergency shutdown valves in response to a preset pressure (high/low) shall be installed and properly maintained for all fluid injection, withdrawal, and any other string in the well.

3. Flow sensors designed to actuate the automatic closure of all emergency shutdown valves in response to abnormal changes in cavern injection and withdrawal flow rates shall be installed and properly maintained on each storage well.

B. Continuous Recording Instruments. Continuous recording instrumentation shall be installed and properly maintained for each storage well. Continuous recordings may consist of circular charts, digital recordings, or similar type. Unless otherwise specified by the commissioner,

digital instruments shall record the required information at no greater than one minute intervals. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure or any other parameter being monitored. The chart shall be scaled such that the parameter being recorded is 30 percent to 70 percent of full scale. Instruments shall be housed in weatherproof enclosures when located in areas exposed to climatic conditions. All fluid volumes shall be determined by metering or an alternate method approved by the Office of Conservation. Minimum data recorded shall include the following:

1. wellhead pressures on the fluid injection, fluid withdrawal, and any other string in the well;
2. volume and flow rate of fluid injected;
3. volume of fluid withdrawn.

C. Casing Inspection

1. For existing permitted liquid hydrocarbon storage caverns without a casing inspection or similar log run on the entire length of the innermost cemented casing within 5 years prior to the effective date of these rules, one shall be run within 5 years of the effective date.

2. For existing permitted natural gas storage caverns without a casing inspection or similar log run on the entire length of the innermost cemented casing within 10 years prior to the effective date of these rules, one shall be run within 5 years of the effective date.

3. A casing inspection or similar log shall be run on the entire length of the cemented casing in each well at least once every 10 years for hydrocarbon storage caverns and 15 years for natural gas storage caverns.

4. Equivalent alternate monitoring programs to ensure the integrity of the innermost, cemented casing may be approved by the Office of Conservation in place of §323.C.1 and §323.C.2.

D. Vapor Detection. The operator shall develop a monitoring plan designed to detect the presence of a buildup of combustible gases or any potentially ignitable substances in the atmosphere resulting from the hydrocarbon storage operation. Variations in topography, atmospheric conditions typical to the area, characteristics of the stored product, nearness of the facility to homes, schools, commercial establishments, etc., should be considered in developing the monitoring plan. The plan shall be submitted as part of the permit application and should include provisions for strategic placement of stationary detection devices at various areas of the facility, portable monitoring devices, or any other appropriate system acceptable to the commissioner.

1. Any stationary detection devices or systems identified in the monitoring plan shall include their integration into the facility's automatic alarm system.

2. Detection of a buildup of combustible gases or any potentially ignitable substances in the atmosphere or system alarm shall cause an immediate investigation by the operator for reason of and correction of the detection.

E. Subsidence Monitoring and Frequency. The owner or operator shall prepare and carry out a plan to monitor ground subsidence at and in the area of the storage cavern(s). A monitoring report shall be prepared and submitted to the Office of Conservation after completion of each monitoring event.

1. The frequency of conducting subsidence-monitoring surveys for caverns in gas storage shall be every six months.

2. The frequency of conducting subsidence-monitoring surveys for caverns in liquid storage shall be every 12 months.

F. Wind Sock. At least one windsock shall be installed at all storage cavern facilities. The windsock shall be visible from any normal work location within the facility.

G. Monitor Wells. Quarterly monitoring of any monitor wells required by §317.A.2.a.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§325. Pre-Operating Requirements—Completion Report

A. The operator shall submit a report describing, in detail, the work performed resulting from the approved permitted activity. The report shall include all information relating to the work and information that documents compliance with these rules and the approved permitted activity. The report shall be prepared and submitted for any approved work relating to the construction, conversion, completion, or workover of the storage well or cavern. Product storage shall not commence until all required information has been submitted to the Office of Conservation and the operator has received written authorization from the Office of Conservation stating storage operations may begin. Preauthorization pursuant to this Subsection is not required for workovers.

B. Where applicable to the approved permitted activity, information in a completion report shall include:

1. all required state reporting forms containing original signatures;

2. revisions to any operation or construction plans since approval of the permit application;

3. as-built schematics of the layout of the surface portion of the facility;

4. as-built piping and instrumentation diagram(s);

5. copies of applicable records associated with drilling, completing, working over, or converting the well and cavern including a daily chronology of such activities;

6. revised certified location plat of the storage well if the actual location of the well differs from the location plat submitted with the well application;

7. as-built subsurface diagram of the storage well and cavern labeled with appropriate construction, completion, or conversion information, i.e., depth and diameter of all tubulars, depths of top of cap rock and salt, and top and bottom of the cavern;

8. as-built diagram of the wellhead labeled with appropriate construction, completion, or conversion information, i.e., valves, gauges, and flowlines;

9. results of any core sampling and testing;

10. results of well or cavern tests such as casing and casing seat tests, well/cavern mechanical integrity pressure and leak tests;

11. copies of any wireline logging such as open hole logs, cased hole logs, the most recent cavern sonar survey, and mechanical integrity test;

12. the status of corrective action on wells in the area-of-review;

13. the proposed operating data, if different from proposed in the application;

14. the proposed injection procedures, if different from proposed in the application;

15. any additional data documenting the work performed for the permitted activity, information requested by the Office of Conservation, or any additional reporting requirements imposed by the approved permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§327. Well and Cavern Mechanical Integrity Pressure and Leak Tests

A. The operator of the storage well and cavern shall have the burden of meeting the requirements for well and cavern mechanical integrity. The Office of Conservation shall be notified in writing at least seven days before any scheduled mechanical integrity test. The test may be witnessed by Office of Conservation personnel, but must be witnessed by a qualified third party. Generally accepted industry methods and standards shall apply when conducting and evaluating the tests required in this Rule.

B. Frequency of Tests

1. Without exception or variance to these rules and regulations, all hydrocarbon storage wells and caverns shall be tested for and satisfactorily demonstrate mechanical integrity before beginning storage activities.

2. For hydrocarbon storage caverns permitted on the effective date of these regulations. If a mechanical integrity test (MIT) has not been run on the storage cavern within three years prior to the effective date of these regulations, the operator must run an MIT within two years in order to remain in compliance.

3. All subsequent demonstrations of mechanical integrity shall occur at least once every five years. Additionally, mechanical integrity testing shall be done for the following reasons regardless of test frequency:

a. after physical alteration to any cemented casing or cemented liner;

b. after performing any remedial work to reestablish well or cavern integrity;

c. before returning the cavern to hydrocarbon storage service after a period of salt solution mining or washing to purposely increase storage cavern size or capacity;

d. after completion of any additional mining or salt washing for caverns engaging in simultaneous storage and salt solution mining or washing;

e. before well closure;

f. whenever the commissioner determines a test is warranted.

C. Test Method

1. All mechanical integrity pressure and leak tests shall demonstrate no significant leak in the cavern, wellbore, casing seat, and wellhead and the absence of significant fluid movement. Test schedules and methods shall consider neighboring activities occurring at the salt dome to reduce any influences those neighboring activities may have on the cavern being tested.

2. Tests shall be conducted using the nitrogen-brine interface method with density interface and temperature logging. An alternative test method may be used if the

alternative test can reliably demonstrate well/cavern mechanical integrity and with prior written approval from the Office of Conservation.

3. The cavern pressure shall be stabilized before beginning the test. Pressure stabilization shall be when the rate of cavern pressure change is no more than 10 PSIG during 24 hours.

4. The stabilized test pressure to apply at the surface shall be calculated with respect to the depth of the shallowest occurrence of either the cavern roof or deepest cemented casing seat and shall not exceed a pressure gradient of 0.90 PSI per foot of vertical depth. However, the well or cavern shall never be subjected to pressures that exceed the storage well's maximum allowable operating pressure or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods during testing.

5. A mechanical integrity pressure and leak test shall be run for at least 24 hours after cavern pressure stabilization and must be of sufficient time duration to ensure a sensitive test. All pressures shall be monitored and recorded continuously throughout the test. Continuous pressure recordings may be achieved through mechanical charts or recorded digitally. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be scaled such that the test pressure is 30 percent to 70 percent of full scale. All charts shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure, temperature, or any other monitored parameter.

D. Submission of Pressure and Leak Test Results. Submit one complete copy of the mechanical integrity pressure and leak test results to the Office of Conservation within 60 days after test completion. The report shall include the following minimum information:

1. current well and cavern completion data;
2. description of the test procedure including pretest preparation and the test method used;
3. one paper copy and an electronic version of all wireline logs performed during testing;
4. tabulation of measurements for pressure, volume, temperature, etc.;
5. interpreted test results showing all calculations including error analysis and calculated leak rates; and
6. any information the owner or operator of the cavern determines is relevant to explain the test procedure or results.

E. Mechanical Integrity Test Failure

1. Without exception or variance to these rules and regulations, a storage well or cavern that fails a test for mechanical integrity shall be immediately taken out of service. The failure shall be reported to the Office of Conservation according to the notification requirements of §309.I. The owner or operator shall investigate the reason for the failure and shall take appropriate steps to return the storage well or cavern to a full state of mechanical integrity. A storage well or cavern is considered to have failed a test for mechanical integrity for the following reasons:

- a. failure to maintain a change in test pressure of no more than 10 PSIG over a 24-hour period;
- b. not maintaining interface levels according to standards applied in the cavern storage industry; or

c. fluids are determined to have escaped from the storage well or cavern during storage operations.

2. Written procedures to rehabilitate the storage well or cavern, extended cavern monitoring, or abandonment (closure and post-closure) of the storage well or cavern shall be submitted to the Office of Conservation within 30 days of mechanical integrity test failure.

3. If a storage well or cavern fails to demonstrate mechanical integrity and where mechanical integrity cannot be reestablished, the Office of Conservation may require the owner or operator to begin closure of the well or cavern according to an approved closure and post-closure plan.

a. The Office of Conservation may waive implementation of closure requirement if the owner or operator is engaged in a cavern remediation study and implements an interim cavern monitoring plan. The owner or operator must seek written approval from the Office of Conservation before implementing a salt cavern monitoring program. The basis for the Office of Conservation's approval shall be that any waiver granted shall not endanger the environment, or the health, safety and welfare of the public. The Office of Conservation may establish a time schedule for salt cavern rehabilitation, cessation of interim cavern monitoring, and eventual cavern closure and post-closure activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§329. Cavern Configuration and Capacity Measurements

A. Sonar caliper surveys shall be performed on all storage caverns. With prior approval of the Office of Conservation, the operator may use another similar proven technology designed to determine cavern configuration and measure cavern capacity as a substitute for a sonar survey.

B. Frequency of Surveys. For liquid hydrocarbon storage caverns, a sonar caliper survey, or other approved survey, shall be performed at least once every 5 years. At least once every 10 years a sonar caliper survey, or other approved survey, shall be performed that logs the roof of the cavern. For natural gas storage caverns, a sonar caliper survey, or other approved survey, shall be run that logs the roof of the cavern at least once every 15 years. Additional surveys as specified by the Office of Conservation shall be performed for any of the following reasons regardless of frequency:

1. before commencing cavern closure operations;
2. whenever leakage into or out of the cavern is suspected;
3. after performing any remedial work to reestablish cavern integrity or raise the deepest casing seat;
4. before returning the cavern to storage service after a period of salt solution mining or washing to purposely increase storage cavern size or capacity;
5. after completion of any additional mining or salt washing for caverns engaging in simultaneous storage and salt solution mining or washing;
6. whenever the Office of Conservation determines a survey is warranted.

C. Submission of Survey Results. One complete paper copy and an electronic version of each survey shall be

submitted to the Office of Conservation within 60 days of survey completion.

1. Survey readings shall be taken a minimum of every 10 feet of vertical depth. Sonar reports shall contain the following minimum information and presentations:

- a. tabulation of incremental and total cavern volume for every survey reading;
- b. tabulation of the cavern radii at various azimuths for every survey reading;
- c. tabulation of the maximum cavern radii at various azimuths;
- d. graphical plot of cavern depth versus volume;
- e. graphical plot of the maximum cavern radii;
- f. vertical cross sections of the cavern at various azimuths drawn to an appropriate horizontal and vertical scale;
- g. vertical cross section overlays comparing results of current survey and previous surveys;
- h. isometric or 3-D shade profile of the cavern at various azimuths and rotations.

2. The information submitted resulting from use of an approved alternative survey method to determine cavern configuration and measure cavern capacity shall be determined based on the method or type of survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§331. Inactive Caverns

A. The following minimum requirements apply when a storage cavern is removed from storage service and is expected to remain out of service for one year or more:

1. notify the Office of Conservation in writing within seven days of the well or cavern becoming inactive (out-of-service). The notification shall include the date the cavern was removed from service, the reason for taking the cavern out of service, and the expected date when the cavern may be returned to service (if known);
2. disconnect all flowlines for injection to the well;
3. maintain continuous monitoring of cavern pressures, fluid withdrawal, and other parameters required by the permit;
4. maintain and demonstrate well and cavern mechanical integrity if storage operations were suspended for reasons other than a lack of mechanical integrity;
5. maintain compliance with financial responsibility requirements of these rules and regulations;
6. any additional requirements of the Office of Conservation to document the storage well and cavern shall not endanger the environment, or the health, safety and welfare of the public during the period of cavern inactivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§333. Quarterly Operating Reports

A. Operation reports shall be submitted quarterly to the Office of Conservation. Reports are due no later than 15 days following the end of the reporting period.

B. Reports shall be submitted electronically on the appropriate Form and reference the operator name, well name, well number, well state serial number, salt dome

name, and contain the following minimum information acquired weekly during the reporting quarter:

1. maximum wellhead pressures (PSIG) on the hanging string;
2. maximum wellhead pressure (PSIG) on the hanging string/casing annulus;
3. description of any event resulting in non-compliance with these rules that triggered an alarm or shutdown device and the response taken;
4. description of any event that exceeds operating parameters for annulus pressure or injection pressure as may be specified in the permit.

C. Upon emergency declaration by the commissioner pursuant to R.S. 30:6 the inventory of stored hydrocarbon in the cavern shall be reported. Report volumes in:

1. barrels (42-gallon barrels) for liquid or liquefied storage; or
2. thousand cubic feet (MCF) for gas storage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§335. Record Retention

A. The owner or operator shall retain copies of all records, data, and information concerning the design, permitting, construction, workovers, tests, and operation of the well and cavern. Records shall be retained throughout the operating life of the well and cavern and for five years following conclusion of any post-closure care requirements. Records, data, and information shall include, but shall not be limited to the permit application, cementing (primary and remedial), wireline logs, drill records, casing records, casing pressure tests, well recompletion records, well/cavern mechanical integrity tests, cavern capacity and configuration surveys, surface construction, closure, post-closure activities, corrective action, sampling data, etc. Unless otherwise specified by the commissioner, monitoring records obtained pursuant to §323.B shall be retained by the owner or operator for a minimum of five years from the date of collection. All documents shall be available for inspection by agents of the Office of Conservation.

B. When there is a change in the owner or operator of the well and cavern, copies of all records shall be transferred to the new owner or operator. The new owner or operator shall then have the responsibility of maintaining such records.

C. The Office of Conservation may require the owner or operator to deliver the records to the Office of Conservation at the conclusion of the retention period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§337. Closure and Post-Closure

A. Closure. The owner or operator shall close the storage well, cavern, and associated parts as approved by the Office of Conservation. Closure shall not begin without written authorization from the Office of Conservation.

1. Notice of Intent to Close

a. The operator shall review the closure plan before seeking authorization to begin closure activities to determine if the conditions for closure are still relevant to the actual conditions of the storage well, cavern, or facility. Revisions

to the method of closure reflected in the plan shall be submitted to the Office of Conservation for approval no later than the date on which the notice of closure is required to be submitted.

b. The operator shall notify the Office of Conservation in writing at least 30 days before the expected closure of the storage well, cavern, or surface facility. Notification shall be by submission of a request for a work permit. At the discretion of the Office of Conservation, a shorter notice period may be allowed.

2. Closure Plan. Plans to close the storage well, cavern, and related surface facility shall be submitted as part of the permit application. The closure plan shall meet the requirements of these rules and regulations, shall use accepted industry practices, and be acceptable to the Office of Conservation. The obligation to implement the closure plan survives the termination of a permit or the cessation of storage operations or related activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a closure plan where necessary.

3. Closure Plan Requirements. The owner or operator shall review the closure plan at least every five years to determine if the conditions for closure are still applicable to the actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a closure plan shall address the following:

a. assurance of financial responsibility as required in §309.B.1. All instruments of financial responsibility shall be reviewed according to the following process:

i.(a). detailed cost estimate for closure of the well and related appurtenances (well, cavern, surface appurtenances, etc.) as prepared by a qualified professional. The closure plan and cost estimate shall include provisions for closure acceptable to the Office of Conservation;

ii. after reviewing the required closure cost estimate, the Office of Conservation may amend the required financial surety to reflect the estimated costs to the Office of Conservation to complete the approved closure of the facility;

iii. documentation from the operator showing that the required financial instrument has been renewed shall be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of funds guaranteed by the financial instrument and suspend or revoke the operating permit. Permit suspensions shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. a prediction of the pressure build-up in the cavern following closure;

c. an analysis of potential pathways for leakage from the cavern, cemented casing shoe, and wellbore. Consideration shall be given to site specific elements of geology, salt cavern geometry and depth, cavern pressure build-up over time due to salt creep and other factors inherent to the salt stock and/or salt dome;

d. procedures for determining the mechanical integrity of the well and cavern before closure;

e. removal and proper disposal of any waste or other materials remaining at the facility;

f. closing, dismantling, and removing all equipment and structures located at the surface (including site restoration);

g. the type, number, and placement of each wellbore or cavern plug including the elevation of the top and bottom of each plug;

h. the type, grade, and quantity of material to be used in plugging;

i. a description of the amount, size, and location (by depth) of casing and any other well construction materials to be left in the well;

j. any proposed test or measurement to be made before or during closure.

4. Standards for Closure. The following are minimum standards for closing the storage well or cavern. The Office of Conservation may require additional standards prior to actual closure.

a. After permanently concluding storage operations with the cavern but before closing the well or cavern, the owner or operator shall:

i. observe and accurately record the shut-in salt cavern pressures and cavern fluid volume for no less than five years or a time period specified by the Office of Conservation to provide information regarding the cavern's natural closure characteristics and any resulting pressure buildup;

ii. using actual pre-closure monitoring data, show and provide predictions that closing the well or cavern as described in the closure plan will not result in any pressure buildup within the cavern that could adversely affect the integrity of the well, cavern, or any seal of the system.

b. Before closure, the owner or operator shall confirm the mechanical integrity of both the well and cavern by well/cavern test methods or analysis of the data collected during the period between the end of storage operations and well/cavern closure.

c. Before closure, the owner or operator shall remove and properly manage any hydrocarbons remaining in the well or cavern.

d. Upon permanent closure, the owner or operator shall plug the well with cement in a way that will not allow the movement of fluids into or between underground sources of drinking water or outside the salt stock.

5. Plugging and Abandonment

a. The well and cavern shall be in a state of static equilibrium before plugging and abandoning.

b. A continuous column of cement shall fill the deepest cemented casing from its shoe to the surface via a series of balanced cement plugs:

i. each cement plug shall be tagged to verify the top of cement and pressure tested to at least 300 PSI for 30 minutes before setting the next cement plug;

ii. an attempt shall be made to place a cement plug in the open borehole below the deepest cemented casing;

iii. a balanced cement plug shall be placed across the shoe of the deepest cemented casing; and

iv. subsequent balanced cement plugs shall be spotted immediately on top of the previously placed balanced cement plug.

c. After placing the top plug, the operator shall:
i. on land locations cut and pull the casings a minimum of 5 feet below ground level. A 1/2 inch thick steel plate shall be welded across the top of all casings. The well's plug and abandonment date and well serial number shall be inscribed on top of the steel plate.

ii. on water locations cut and pulled the casings a minimum of 15 feet below the mud line.

d. The operator may alter the plan of abandonment if new or unforeseen conditions arise during the well work, but only after approval by the Office of Conservation.

6. Closure Report. The owner or operator shall submit a closure report to the Office of Conservation within 30 days after closing the storage well, cavern, facility, or part thereof. The report shall be certified as accurate by the owner or operator and by the person charged with overseeing the closure operation (if other than the owner or operator). The report shall contain the following information:

a. detailed procedures of the closure operation. Where actual closure differed from the plan previously approved, the report shall include a written statement specifying the differences between the previous plan and the actual closure;

b. one original of the appropriate Office of Conservation plug and abandon report form (Form UIC-P&A or successor); and

c. any information pertinent to the closure activity including test or monitoring data.

B. Post-Closure. Plans for post-closure care of the storage well, cavern, and related facility shall be submitted as part of the permit application. The post-closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of storage operations or related activities. The requirement to maintain and implement an approved post-closure plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a post-closure plan where necessary.

1. The owner or operator shall review the post-closure plan at least every five years to determine if the conditions for post-closure are still applicable to actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a post-closure plan shall address the following:

a. assurance of financial responsibility as required in §309.B.1. All instruments of financial responsibility shall be reviewed according to the following process:

i.(a). detailed cost estimate for adequate post-closure care of the well and cavern shall be prepared by a qualified, independent third party. The post-closure care plan and cost estimate shall include provisions acceptable to the Office of Conservation;

ii. after reviewing the closure cost estimate, the Office of Conservation may amend the amount to reflect the costs to the Office of Conservation to complete the approved closure of the facility;

iii. documentation from the operator showing that the required financial instrument has been renewed must be received each year by the date specified in the permit. When

an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of the funds guaranteed by the financial instrument and suspend or revoke the operating permit. Any permit suspension shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. any plans for monitoring, corrective action, site remediation, site restoration, etc., as may be necessary.

2. Where necessary and as an ongoing part of post-closure care, the owner or operator shall continue the following activities:

a. conduct subsidence monitoring for a period of no less than 10 years after closure of the facility;

b. complete any corrective action or site remediation resulting from the operation of a storage well;

c. conduct any groundwater monitoring if required by the permit until pressure in the cavern displays a trend of behavior that can be shown to pose no threat to cavern integrity, underground sources of drinking water, or other natural resources of the state;

d. complete any site restoration.

3. The owner or operator shall retain all records as required in §335 for five years following conclusion of post-closure requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed adoption of Statewide Order No. 29-M (Revision 3) on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government is not required to perform any function contained in the proposed Rule amendment.

Poverty Statement

In accordance with R.S. 49:973, the following statements are submitted after consideration of the impact of the adoption of Statewide Order No. 29-M (Revision 3) on poverty as defined therein.

1. The proposed Rule amendment will have no effect on household income, assets, and financial security.

2. The proposed Rule amendment will have no effect on early childhood development and preschool through postsecondary education development.

3. The proposed Rule amendment will have no effect on employment and workforce development.

4. The proposed Rule amendment will have no effect on taxes and tax credits.

5. The proposed Rule amendment will have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Natural Resources, Office of Conservation has determined that these amendments will have no estimated effect on small businesses.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., December 3, 2013, at Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9725; or Office of Conservation, 617 North Third Street, Baton Rouge, LA 70802. All inquiries should be directed to Mr. Tyler Gray, an attorney with the Office of Conservation, at the above addresses or by phone to (225) 342-5540 referencing Docket No. IMD-2013-08.

Public Hearing

The Commissioner of Conservation will conduct a public hearing at 9 a.m., Tuesday, November 26, 2013, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hydrocarbon Storage Wells in Salt Dome Cavities

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

No additional cost to state or local governmental units is anticipated as a result of adoption of the proposed Rule change. The new Rules and regulations will result in an increase in workload. In order to adequately provide for the new regulations, two positions are being reassigned from the Oil & Gas Program to the Public Safety Program. Existing employees in the Oil & Gas Regulatory Program will absorb the previous duties assigned the 2 positions that are being transferred to the Public Safety Program. Pursuant to Act 368 and Act 369 of the 2013 Regular Legislative Session, the proposed rule change makes changes regarding the location, operational and reporting requirements for both proposed and existing Class II injection wells used for the storage of hydrocarbons in solution-mined salt caverns. Changes found in the proposed rule include: 1) documentation of the method by which proof of financial security is to be maintained for closure and post closure costs; 2) maintaining an updated site assessment to include a geological, geomechanical and engineering assessment of the stability of salt stock and overlying/surrounding sediment based on past, current and planned well and cavern operations; 3) locations of caverns and proposed caverns in relation to other caverns and the periphery of the salt stock are to be provided on maps and cross-section depictions based on the best available information and updated at least every five years; 4) mandatory setback distance locations for salt caverns in relation to the periphery of salt stock and in relation to other man-made structures within salt stock; 5) mandatory monitoring plan implementation for

existing caverns within the requirement for setback distance to periphery of salt stock; 6) provisions for consideration of approval to plug and abandon hydrocarbon storage cavern wells; 7) mandatory submission and maintenance of an updated post-closure plan to include subsidence monitoring, corrective action, site remediation, etc., as may be necessary following plugging and abandonment and 8) increases to minimum testing and monitoring requirements for hydrocarbon storage wells and related caverns.

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

There is no anticipated effect on revenue collections of state or local government units as a result of this Rule change.

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

The proposed Rule change will result in increased costs to the regulated community subject to the proposed Rule change. These costs are a result of: 1) an increase in frequency of required sonar tests with estimated annualized cost of \$2,000 to both future wells/caverns, and the approximately 80 wells/caverns which are not already meeting the proposed requirements and 2) a vapor detection plan estimated at a minimum of \$300 each for approximately 150 wells/caverns in the state (\$45,000). While these are new requirements included in the proposed regulations, a majority of cavern operators and/or owners are currently meeting these standards as required by specific provisions of permits issued by the Office of Conservation.

A significant increase to all operators will be the casing inspection log, which is required every 10 years for liquid storage and every 15 years for natural gas storage. While this increased cost will be spread out over 10 or 15 years, the Office of Conservation estimates that approximately 150 wells will need casing inspection logs as a result of the proposed regulations, which cost between \$8,000 and \$17,000 every 10 or 15 years. Updated maps and cross-sections of caverns in relation to the periphery of salt stock and other man-made structures within the salt stock are required to be submitted every five years to the Office of Conservation. In most situations where little or no new information is available for use in this update, the cost will be approximately \$5,000 per operator. If additional well control exists for use in this update the cost will be approximately \$20,000. In the rare event that 3-D seismic data is required for an update by an operator, the cost to interpret this data may reach as high as approximately \$200,000.

Several economic benefits are expected to affect non-governmental groups. Louisiana has numerous consultants, contractors and professionals, who will benefit economically from being hired by the regulated community to perform the increased monitoring, testing and reporting required in the proposed regulations. The proposed regulations are designed to prevent emergency situations and environmental disasters thus preventing substantial economic costs, which could reach into the millions of dollars, to the regulated community, individuals businesses, and the public at large.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this rule change.

James H. Welsh
Commissioner
1310#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Coastal Management

Mitigation (LAC 43:1.724)

Under the authority of R.S. 49:214.21-49:214.41 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., the Department of Natural Resources, Office of Coastal Management proposes to amend LAC 43:724 relative to the rules and procedures for mitigation.

This proposed Rule amendment is intended to assist in ensuring that the Office of Coastal Management's regulatory practices regarding its mitigation program are consistent with the State's Integrated Ecosystem Restoration and Hurricane Protection: Louisiana's Comprehensive Master Plan for a Sustainable Coast, and simplify the present mitigation rules for selecting compensatory mitigation.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter C. Coastal Use Permits and Mitigation

§724. Rules and Procedures for Mitigation

A. - I.23.b. ...

J. Selecting Compensatory Mitigation

1. In selecting compensatory mitigation, the secretary shall consider the recommendations and comments of those state and federal agencies which demonstrated an interest in participating in the selection of the appropriate compensatory mitigation during permit processing. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated an interest in participating in the selection of appropriate compensatory mitigation during permit processing.

2. The secretary shall ensure that the selected compensatory mitigation, in order of priority, is sufficient, properly located, and accomplished by the most desirable available/practicable option as set forth in §724.E.1. Compensatory mitigation siting shall be consistent with any plan adopted pursuant to R.S. 49:214.5.3.

3. The selected compensatory mitigation proposal must completely offset the unavoidable net loss of coastal resources due to permitted activities, unless a variance is granted pursuant to §724.K.

4. The compensatory mitigation proposal must have an anticipated positive impact on the Louisiana Coastal Zone or the Louisiana Coastal Wetlands Conservation Plan Area and:

a. may be located, in accordance with R.S. 49:214.41(E), on the affected landowner's or landowners' property, provided the secretary determines that the proposed mitigation is acceptable and sufficient;

b. shall be of the same habitat type as the proposed impact or produce ecological values which would be similar to those lost as a result of the proposed impact; and

c. shall be located within the same hydrologic basin as the proposed impact, unless no feasible and sustainable alternatives for compensatory mitigation exist in

that basin. Compensatory mitigation shall be consistent with any plan adopted pursuant to R.S. 49:214.5.3.

5. The procedure for selecting compensatory mitigation for proposed activities which would adversely impact coastal resources on one landowner's or multiple landowners' property shall be as follows:

a. If an applicant proposes unavoidable net losses of, or impacts to coastal resources those net losses or impacts shall be quantified. If deemed necessary, a biology field investigation and associated report shall be provided. The secretary shall, within 10 calendar days after submittal of the field investigation report:

i. determine and provide the habitat type and extent (i.e., acreage, duration) of anticipated net losses of, or impacts to coastal resources to the applicant; and

ii. request the applicant to submit, within 40 days of the date of the anticipated impact determination letter, a compensatory mitigation proposal which has been coordinated with affected landowner(s) that have at least 1 acre or more of anticipated net losses of, or impacts to coastal resources.

b. Once the secretary has provided the habitat type and extent of anticipated net losses of, or impacts to coastal resources to the applicant, the applicant shall notify the affected landowner(s) in writing that mitigation may be required within seven calendar days of receipt of the letter from the secretary and furnish proof of such notification; or if a modification request from the applicant is submitted, and such modification would result in a substantive change in net losses or impacts, notification must be sent by the applicant to the landowner(s) within seven calendar days of the verification and quantification of impacts. The applicant's notification to the landowner(s) must include:

i. the habitat type and extent of anticipated net losses of, or impacts to coastal resources to the affected landowner(s);

ii. information on the landowner's or landowners' mitigation options. All options shall be discussed and coordinated between the applicant and landowner(s) and shall include:

(a). suggestions on developing an on-site compensatory mitigation proposal with the applicant when the anticipated net losses of, or impacts to coastal resources to a given landowner's or landowners' property would be 1 acre or more, unless it is determined to be acceptable by the secretary for net losses of, or impacts to coastal resources less than 1 acre.

(b). a request for the landowner(s) whose anticipated net losses of, or impacts to coastal resources is 1 acre or greater to submit a statement indicating his/her mitigation option within 30 days of such a request. Each landowner's or landowners' statement:

(i). shall indicate acceptance of the applicant's compensatory mitigation proposal should that proposal be located on the landowner's or landowners' property;

(ii). shall propose his/her own mitigation proposal should the landowner(s) find the applicant's mitigation proposal unacceptable and provide a written explanation as to why the proposal is unacceptable;

(iii). shall propose and provide a landowner-authored mitigation plan; or

(iv). shall waive his/her option for mitigation on their property.

c. All compensatory mitigation proposals submitted by the landowner(s) or applicant; developed among the landowner(s), applicant, and the secretary; suggested by state advisory agencies, the Department of the Army (DA), or federal advisory agencies; or developed by the secretary shall be considered and shall include the following:

i. a scope of work that provides:

(a). the wetland creation or habitat restoration activity that the applicant is proposing, for example: erosion control, marsh creation, shoreline protection, plantings, etc.;

(b). information as to whether the proposed wetland creation or habitat restoration activity will result in the establishment of coastal plant communities; a description of the proposed construction activities;

ii. an explanation detailing why the proposed site requires wetland creation or habitat restoration and why this measure should be implemented, for example: the shoreline is retreating, the site is a prior converted wetland, existing degraded habitat, and the applicant is proposing this measure to create a wetland or restore a habitat. etc.;

iii. on-site Habitat Loss Rates: Provide the average land loss rate (acres per year) and the shoreline erosion rate (linear feet per year);

iv. the exact limits/location (Latitude and Longitude) of the proposed habitat restoration site: Center Coordinate (GCS NAD 83). Plan view plats and the exact coordinates on the plan view plats for all boundary corners must be provided;

v. a list of landowner(s) and addresses for the proposed wetland creation or habitat restoration site;

vi. a list of the extent of the proposed work: Total acreage benefited and Total linear feet benefited;

vii. the existing site condition: Provide a detailed description of the condition of the site; describe the soils; drainage patterns/hydrology; list all existing manmade structures on the site, etc.;

viii. a list of the proposed resulting wetland creation or habitat type (s), for example: forested wetland, fresh/intermediate marsh, or brackish/salt marsh;

ix. a long term protection and maintenance plan: (marsh creation/restoration sites must be maintained for 20 years, forested wetland sites must be maintained for 50 years) Plan for re-establishing wetland vegetation if initial planting fails. Plan for invasive species management, and also a plan for all maintenance and or management activities (include all timber stand improvement activities);

x. a planting plan (if applicable) shall include:

(a). The type and number of trees per acre that will be planted;

(b). The size of the seedlings that will be planted and the type of container;

(c). The type and number of marsh grass transplants that will be planted;

(d). The size of the marsh grass transplants that will be planted and the type of container;

(e). The total number of acres that will be planted; and

(f). The expected survival rate of all plants after two years.

xi. and provide the following submittal information:

(a). the party responsible for the submittal;

(b). the name of the applicant and/or landowner(s);

(c). the domiciliary address and phone number of the applicant and/or landowner(s);

(d). the name and phone number of the agent or contact if different from applicant; and

(e). the mailing address of the applicant and/or landowner(s) if different from the domiciliary address.

d. A landowner(s) failure to timely accept the applicant's compensatory mitigation proposal as described in §724.J.5.b.ii.(b) or submit a compensatory mitigation proposal as described in §724.J.5.c. shall result in automatic forfeiture of the landowner's or landowners' option to require compensatory mitigation for the subject activity to be performed on the respective property.

e. Where landowner(s) propose separate/multiple compensatory mitigation measures, the secretary shall consider the following factors in selecting compensatory mitigation provided the option is consistent with any plan adopted pursuant to R.S. 49:214.5.3.

i. cost effectiveness of offsetting coastal resources losses via separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s);

ii. practicability, on the part of the secretary, of confirming/enforcing implementation, operation, and maintenance of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s); and

iii. the long-term ecological benefits of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s).

f. The secretary shall select the compensatory mitigation according to the following options, provided the option is consistent with any plan adopted pursuant to R.S. 49:214.5.3.

i. individual compensatory mitigation proposal on the affected landowner's or landowners' property;

ii. acquisition of credits from a mitigation bank or approved in-lieu-fee program; or

iii. individual mitigation proposal not on the affected landowner's or landowners' property.

K. - K.7.d.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Management, LR 40:

Family Impact Statement

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

Poverty Impact Statement

This proposed Rule has no known impact on poverty as described in R.S. 49:973

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Natural Resources Office of Coastal Management has conducted a Regulatory Flexibility Analysis and found that

the proposed amendment of this Rule will have negligible impact on small businesses.

Public Comment

All interested persons are invited to submit written comments on the proposed regulation amendment. Persons commenting should reference this proposed regulation by Rules and Procedures for Mitigation. Such comments must be received no later than November 10, 2013, at 4:30 p.m., and should be sent to Kelley Templet, Manager, Office of Coastal Management P.O. Box 44487, Baton Rouge, LA 70804-4487 or by email to kelley.templet@la.gov. Copies of this proposed regulation can be purchased by contacting OCM at (225) 342-7360, and is available for viewing and copying on the internet at: <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=85&ngid=5>

Public Hearing

Requests for a public hearing must be received by 4:30 p.m. November 10, 2013. If determined a public hearing is warranted, the public hearing will be held on November 25, 2013 from 10 a.m. to 12 p.m. in the Griffon Room of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802, so that interested persons may submit oral comments on the proposed amendments.

Stephen Chustz
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Mitigation

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

There are no estimated implementation costs or savings to the state or local governmental units as a result of the proposed rule change. The proposed rule change provides for the consolidation of regulations for single and multiple landowners who must select a compensatory mitigation option when any net loss of wetland ecological value to their property is anticipated to occur due to the granting of a coastal use permit. The proposed rule changes the timeline when coastal use permit applicants must submit a compensatory mitigation proposal, thereby giving applicants an additional 10 days to submit a proposal that has been coordinated with the affected landowner(s). The proposed rule change also specifies the documentation required when submitting a proposal for compensatory mitigation.

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

There is no anticipated effect on revenue collections of state or local governmental units resulting from the proposed rule change.

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

Implementation of the proposed rule change will have no anticipated economic impact on those affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no anticipated effect on competition and employment.

Keith Lovell
Assistant Secretary
1310#039

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Income Tax Credits for Solar Energy Systems (LAC: 61:I.1907)

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1907 relative to income tax credits for solar energy systems.

The primary purpose of this proposed regulation is to amend LAC 61:I.1907 to update the income tax regulation relative to changes resulting from Act 428 of the 2013 Regular Session of the Louisiana Legislature.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered By the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions

§1907. Income Tax Credits for Solar Energy Systems

A. Revised Statute 47:6030 provides an income tax credit for the purchase and installation of a solar electric system, solar thermal system or any combination of components thereof, collectively referred to as a "system", at a single family residence located in Louisiana. In order for costs associated with the purchase and installation of a solar electric system or solar thermal system to qualify for this credit, the expenditure must be made on or after January 1, 2008 and before January 1, 2018.

1. Purchase of Solar Energy System

a. The amount of the credit for the purchase and installation of a system at a Louisiana residence or for a system which is already installed in a newly constructed home located in Louisiana is equal to 50 percent of the first \$25,000 of the cost of a solar electric system, solar thermal system, or any combination of components thereof.

2. Lease of Solar Energy System

a. The amount of the credit for the purchase and installation of a system before January 1, 2014 at a Louisiana residence by a third-party through a lease with the owner of the residence is equal to 50 percent of the first \$25,000 of the cost of a solar electric system, solar thermal system, or any combination of components thereof.

b. The amount of the credit for the purchase and installation of a system on or after January 1, 2014 and before January 1, 2018 at a Louisiana residence by a third-party through a lease with the owner of the residence is equal to 38 percent of the first \$25,000 of the cost of a solar electric system, solar thermal system, or any combination of components thereof.

3. Additional Lease of Solar Energy System Restrictions. For purposes of determining the amount of credit for the purchase and installation of a system at a Louisiana residence by a third-party through a lease with the owner of the residence, eligible costs of the system shall be subject to the following provisions:

a. For a system purchased and installed on or after July 1, 2013, and before July 1, 2014, the system shall cost

no more than four dollars and fifty cents per watt and provide for no more than six kilowatts of energy.

b. For a system purchased and installed on or after July 1, 2014, and before July 1, 2015, the system shall cost no more than three dollars and fifty cents per watt and provide no more than six kilowatts of energy.

c. For a system purchased and installed on or after July 1, 2015 and before January 1, 2018, the system shall cost no more than two dollars per watt and provide for no more than six kilowatts of energy.

B. Definitions

Charge Controller—an apparatus designed to control the state of charge of a bank of batteries.

Grid-Connected, Net Metering System—a solar electric system interconnected with the utility grid in which the customer pays the utility for only the net energy used from the utility minus the energy fed into the grid by the customer. All interconnections must be in accordance with the capacity, safety and performance interconnection standards adopted as part of the appropriate, established Net Metering rules and procedures of the Louisiana Public Service Commission, the New Orleans City Council, or other Louisiana utility regulatory entity.

Home—a single-family detached dwelling.

Inverter—an apparatus designed to convert direct current (DC) electrical energy to alternating current (AC) electrical energy. Modern inverters also perform a variety of safety and power conditioning functions that allow them to safely interconnect with the electrical grid.

Manufactured or Produced—

1. wholly the growth, product, or manufacture of the United States or a country to which the United States is a party to an international agreement meeting the criteria of the American Recovery and Reinvestment Act of 2009 (ARRA) or

2. in the case of a manufactured good that consists in whole or in part of materials from a non-ARRA compliant country, has been substantially transformed in an ARRA-compliant country into a new and different manufactured good distinct from the materials from which it was transformed. This definition has been adopted in accordance with 2 CFR § 176.160.

Placed in Service—fully operational and in a current state of delivering solar energy to the qualifying residence in a manner consistent with the intended purpose of the solar energy system.

Photovoltaic Panel—a panel consisting of a collection of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

Residence—a single family detached dwelling. To be considered a residence, the physical properties of the space must provide the basic elements of a home, including appropriate and customary appliances and facilities and the occupant must use the facilities as a home. All eligible residences must be located in Louisiana.

Solar Electric System—a system consisting of photovoltaic panels with the primary purpose of converting sunlight to electrical energy and all equipment and apparatus necessary to connect, store and process the electrical energy for connection to and use by an electrical load.

Solar Thermal System—a system consisting of a solar energy collector with the primary purpose of converting

sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling.

Supplemental Heating Equipment—a device or apparatus installed in a solar thermal system that utilizes energy sources other than sunlight to add heat to the system, with the exception of factory installed auxiliary heat strips that are an integral component of a specifically engineered solar hot water storage tank.

C. Eligibility for Solar Energy Systems Tax Credits

1. Regardless of the number of system components installed on each qualifying residence, such components shall constitute a single system for each residence for purposes of the tax credit.

2. All solar energy systems must be installed in the immediate vicinity of the residence claiming the credit such that the electrical, mechanical or thermal energy is delivered directly to the residence.

3. In order to claim a tax credit for either a solar electric energy system, solar thermal energy system, or a combination of components thereof, the components of a system must be purchased and installed at the same time as a system.

4. For a taxpayer other than the owner of the residence to claim a tax credit for a solar electric energy system, solar thermal energy system, or combination of components thereof, the taxpayer must provide the department with a copy of the contract in which the owner of the residence has clearly and unambiguously stated that he is not entitled to and will not claim the tax credit and thereby transfers his right to claim the tax credit to the installer, developer or third-party taxpayer. Absent such a contract, the owner of the residence is the only taxpayer eligible to claim the credit and the installer, developer or third-party taxpayer shall have no right to the credit. For an installer, developer, or third-party taxpayer who purchases a system for installation at another person's residence in connection with a lease of the system by the owner of the residence, the transfer of the right to obtain the credit from the homeowner to the installer, developer or third-party taxpayer shall be regarded as taxable consideration received in exchange for the homeowners' right to use or possess the solar energy system. In such instances, the installer, developer or third-party taxpayer shall be responsible for collecting and remitting the sales tax on the full amount of the credit received.

D. Claiming the Solar Energy Systems Tax Credit

1. The credit for the purchase and installation of a solar energy system by a taxpayer at his residence shall be claimed by the taxpayer on his Louisiana individual income tax return for the taxable year in which the system is completed and placed in service. If a taxpayer purchases a newly constructed home with a system already installed, the credit shall be claimed on the tax return for the taxable year in which the act of sale occurred.

2. The credit for the purchase and installation of a solar energy system by a third-party taxpayer at another person's residence through a lease with the owner of the residence shall be claimed by the taxpayer on his Louisiana individual, corporate or fiduciary income tax return for the taxable year in which the system is completed and placed in service.

E. Solar Energy Systems Eligible for the Tax Credit

1. The credit provided by R.S. 47:6030 is only allowed for a complete and functioning solar energy system. Local and state sales and use taxes are an eligible system cost. With respect to each residence, only one tax credit for the purchase and installation of a single system shall be allowed. Any additional system(s) or equipment added at a later date will not qualify for additional credit. This provision also applies to residences which have claimed a solar tax credit prior to July 1, 2013 and shall in no way be construed or interpreted to allow more than one tax credit for any residence.

2. System components purchased on or after July 1, 2013 for all solar electric or solar thermal energy systems must be compliant with the federal American Recovery and Reinvestment Act of 2009. This requirement applies to all credit-eligible components as described below in Subsection E. Components which are manufactured or produced in the United States or in a country with which the United States is a party to an international agreement meeting the criteria of ARRA will generally be regarded as ARRA compliant. For additional information, see Revenue Information Bulletin 13-013.

3. Non-ARRA compliant system components purchased prior to July 1, 2013 may qualify for credit provided that:

- a. such system components are incorporated into a system that is placed in service prior to January 1, 2014; and
- b. the purchaser provides written documentation of the pre-July 1, 2013 date of purchase of the eligible components.

4. Solar Electric Systems

a. Eligible solar electric systems under the provisions of R.S. 47:6030 include grid-connected net metering systems, grid-connected net metering systems with battery backup, stand alone alternating current (AC) systems and stand alone direct current (DC) systems, designed to produce electrical energy and may include the following.

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems	photovoltaic panels, mounting systems, inverters, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Grid-Connected, Net Metering Solar Electric Systems with Battery Backup	photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric AC Systems	photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

System Type	Eligible System Components
Stand Alone Solar Electric DC Systems	photovoltaic panels, mounting systems, charge controllers, batteries, battery cases, DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

5. Solar Thermal Systems

a. Solar thermal systems eligible under the provisions of R.S. 47:6030 include systems designed to produce domestic hot water, systems designed to produce thermal energy for use in heating and cooling systems and may include the following.

System Type	Eligible System Components
Domestic Solar Hot Water Systems	solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Heating and Cooling Thermal Energy Systems	solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks

6. Solar energy systems not installed on the rooftop of the residence but installed on the qualifying property shall constitute a free standing ground mounted system. Ground mounted solar energy systems include but are not limited to single pole mounted structures, multiple pole mounted structures utilizing a foundation if necessary. Additional walls, interior finishes, foundations, roofing structures not directly related to the solar energy system, or any other addition not directly related to the solar energy structure are not eligible system costs. Ground mounted systems must be more than 8' feet in height at its lowest point if titled unless specific building codes and/or flood plain restrictions apply. Each qualifying free standing ground mounted system must be separately itemized from any and all other energy components included in a taxpayer's submitted Form R-1086.

7. Any solar energy system for which a tax credit is claimed shall include an operations and maintenance manual containing a working diagram of the system, explanations of the operations and functions of the component parts of the system and general maintenance procedures.

8. All photovoltaic panels, inverters and other electrical apparatus claiming the tax credit must be tested and certified by a Federal Occupational Safety and Health Administration (OSHA) nationally recognized testing laboratory and must be installed in compliance with manufacturer specifications and all applicable building and electrical codes.

9. All photovoltaic systems installed at a tilt angle greater than 5 degrees shall have an azimuth greater than 80 degrees E and no more than 280 degrees W. North facing solar panels generally do not conform to industry best practices unless criteria above are satisfied.

10. All solar thermal apparatus claiming the tax credit must be certified by the Solar Rating and Certification Corporation (SRCC) and installed in compliance with manufacturer specifications and all applicable building and plumbing codes.

11. Applicants applying for the tax credit on either a solar electric or solar thermal system must provide proof of purchase and installation to the Louisiana Department of Revenue detailing the following as applicable to your particular solar energy system installation:

- a. type of system applying for the tax credit;
- b. output capacity of the system:
 - i. Solar Electric Systems—total nameplate listed kW of all installed panels;
 - ii. Solar Thermal Systems—listed SRCC annual BTU or equivalent kWh output;
- c. physical address where the system is installed in the state;
- d. total cost of the system as applied towards the tax credit separated in an itemized list by:
 - i. equipment costs;
 - ii. installation costs;
 - iii. taxes;
- e. make, model, and serial number of photovoltaic panels, inverters, and solar thermal collectors applied for in the tax credit;
- f. name and Louisiana contractor's license number of seller/ installer;
- g. if applicable, copy of the modeled array output report using the PV Watts Solar System Performance Calculator developed by the National Renewable Energy Laboratory and available at the website www.nrel.gov/rredc/pvwatts. The analysis must be performed using the default PV Watts de-rate factor;
- h. copy of a solar site shading analysis conducted on the installation site using a recognized industry site assessment tool such as a Solar Pathfinder or Solmetric demonstrating the suitability of the site for installation of a solar energy system.
 - i. conveyance certificate, deed or other legal document which evidences the owner of the residence.
 - j. when a system is installed by a third-party owner, a complete and signed Declaration by Residential Property Owner Not Claiming the Solar Energy Income Tax Credit.
 - k. for a system already installed in a newly constructed home located in Louisiana, a copy of the sale agreement or other legal document which evidences the date of sale.
 - l. for a system other than one which is already installed in a newly constructed home located in Louisiana, a copy of the Interconnection Agreement for Net Metering or other document which evidences the effective placed in service date.
 - m. if applicable, an itemized list of all non-ARRA compliant components incorporated into the system which demonstrates a pre-July 1, 2013 purchase date. Additional documentation, such as an invoice, receipt, or other written

documentation demonstrating the date of purchase of such components should be retained and made available for production by the taxpayer upon demand by the Department of Revenue.

n. For all components purchased on or after July 1, 2013, documentation which demonstrates ARRA compliance, such as a receipt, invoice, certification from the distributor, vendor, supplier or manufacturer or any other reasonable documentation which verifies the component was manufactured or produced in the United States or other qualifying country.

F. Eligible Costs

1. Eligible Costs. Eligible costs that can be included under the tax credit are reasonable and prudent costs for equipment and installation of the solar energy systems defined in Subsection B and described in Subsection E above.

a. All eligible solar energy systems must be sold and installed by a contractor duly licensed by and in good standing with the Louisiana Contractors Licensing Board with a classification of Solar Energy Equipment and a certificate of training in the design and installation of solar energy systems from an industry recognized training entity or a Louisiana technical college.

2. Ineligible Costs. Labor costs for individuals performing their own installations are not eligible for inclusion under the tax credit. For purposes of this Paragraph, "individuals" shall mean natural persons as defined in Civil Code Article 24. For all other taxpayers, labor costs for unrelated services, including, but not limited to tree trimming and tree removal, are not eligible under the tax credit. Supplemental heating and cooling (HVAC) equipment costs used with solar collectors are not eligible for inclusion under the tax credit. Other items ineligible for a solar energy systems tax credit include, but are not limited to the following: stand alone solar powered attic fans or ventilation systems, solar powered lights, solar powered air conditioning or heating units, solar day lighting apparatuses, solar powered pool pumps, solar pool heating systems, and all other stand-alone solar device(s).

3. Whenever, in return for the purchase price or as an inducement to make a purchase, marketing rebates or incentives are offered, the eligible cost shall be reduced by the fair market value of the marketing rebate or incentive received. Such marketing rebates or incentives include, but are not limited to, cash rebates, prizes, gift certificates, trips, energy efficiency improvements not directed related to solar energy installation, including, but not limited to spray foam insulation, radiant barrier, window sealing and/or caulking, heating and air conditioning improvements, blower door testing, thermostat upgrades which are not an integral part of the solar energy monitoring system, domestic hot system upgrades not related to solar hot water system insulation, or any other thing of value given by the installer or manufacturer to the customer as an inducement to purchase an eligible solar energy system.

4. Only one solar energy systems tax credit is available for each residence. In addition, in the event of purchase and installation by a third-party taxpayer through a lease with the owner of the residence, only one solar energy systems tax credit is available for each eligible system. Once a solar energy systems tax credit is claimed by a taxpayer for

a particular residence or system, that same residence or system is not eligible for any other tax credit pursuant to this Section. If the residential property or system is sold, the taxpayer who claimed the tax credit must disclose his use of the tax credit to the purchaser.

G. Other Tax Benefits Disallowed

1. A taxpayer shall not receive any other state tax credit, exemption, exclusion, deduction, or any other tax benefit for solar property for which the taxpayer has received a solar electric energy system or solar thermal energy system credit under R.S. 47:6030.

2. Exception. The credit may be used in addition to any federal tax credits earned for the same system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 34:2206 (October 2008), amended LR 36:2047 (September 2010), amended LR 39:0099 (January 2013), amended LR 40:

Family Impact Statement

The proposed amendment of LAC 61:I.1907, regarding income tax credits for solar energy systems, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

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

Poverty Statement

The proposed amendment will have no impact on poverty as described in R.S. 49:973.

Public Comments

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Brad Blanchard, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m., Friday, November 22, 2013.

Public Hearing

A public hearing will be held on Monday, November 25, 2013, at 10 a.m. in the La Belle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Tim Barfield,
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Income Tax Credits for Solar Energy Systems**

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

This amendment adds documentation requirements for all systems related to the manufacture of system components (ARRA compliance as certified by manufacturers, vendors, distributors, suppliers or any other reasonable source deemed

fit by the Department of Revenue), reduces the credit percentage from 50% to 38% in FY 15 for leased systems and adds credit basis (cost) restrictions for leased systems by lowering the cost per watt from \$4.50 in FY 14 to \$2 per watt by FY 16. The system size is also limited to 6kw, which is not expected to be a constraining factor since the \$25,000 cost cap was retained. The amendment also provides for the eligibility of combined thermal and electric systems, as long as the cost cap is not breached. Combined systems are not expected to change the outcome of credit utilization materially since most systems were already receiving the maximum credit. Verification of compliance with these new requirements may require the reallocation of resources from other administrative functions to the administration of this credit. The elimination of systems installed on apartments should reduce the number of claims to be processed, potentially making resources available for verification of compliance with the new requirements. Any additional costs will be absorbed in the existing budget. Local governmental units are not affected by this proposal.

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

The proposed amendment addresses changes to the wind and solar energy systems tax credit due to Act 428 of the 2013 Louisiana Legislative Session, including removal of wind systems from eligibility, allowing the credit only for detached residences, allowing the combination of solar electric and solar thermal systems under the cost cap and adding credit basis (eligible cost) restrictions to leased systems, which become more restrictive over time. Also the credit is terminated after year 2017 for both purchased and leased systems. In net, these changes serve to reduce the credit, leading to an anticipated increase in general fund revenue collections of the state. The amount of the increase is indeterminable but is estimated to approximate tens of millions of dollars annually by FY 17. As a historical measure, credits received under the program in FY 13 totaled about \$34.6M, thus the full elimination of the credit in FY 18 is expected to result in a substantial increase to the general fund. This proposal should have no impact on the revenue collections of local governmental units.

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

New requirements relative to the location of the manufacture of system components, including the submission of proof regarding those requirements, are expected to increase costs and workload of credit claimants by a minimal amount. Two new documentation submission requirements related to systems installed in newly constructed homes are also expected to increase costs and workload of credit claimants by a minimal amount. Business activity related to the installation of solar energy systems in non-detached dwellings will be reduced by the removal of eligibility. Lessors of solar energy systems are also expected to experience a reduction in business activity due to the tightened percentage and credit basis restrictions. Wind systems ineligibility is expected to have little or no impact since there were few claimants historically. Potential buyers and lessees of solar energy systems will also be impacted by reductions in credit availability through more restrictive eligibility requirements. These effects are indeterminable but are directly correlated with the calculations in Section II.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Leased systems, those dealers using components manufactured in non-ARRA compliant countries, and those targeting systems on structures other than detached residences will no longer be eligible for the full amount of the credit, though purchased systems will be eligible until credit expiration. This amendment is expected to directly have an indeterminable negative effect on employment by solar system

installation businesses as related to fewer installations in response to more restrictive eligibility requirements over time.

Tim Barfield
Secretary
1310#041

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Workforce Commission
Office of Workers' Compensation**

Fee Schedule Update
(LAC 40:I:306, 307, 4119, 4339, 5101,
5127, 5157, 5315, 5321, and 5399)

Notice is hereby given, in accordance with R.S. 49:950, et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative provisions Act, proposes to amend LAC 40:I:306;307; 4119; 4339; 5101;5127;5157;5315;5321;5399.

In July of 2013 the Office of Workers' Compensation (OWC) updated the Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes in order to be consistent with the American Medical Association (AMA). In doing so, numerous codes were added and deleted; however, the rules associated with the Current Dental Terminology (CDT) and Physical Medicine (which references physical and occupational therapist codes) were omitted in the updates. The proposed rule will replace the obsolete rules and guidelines associated with the CDT and Physical Medicine codes.

The proposed rule will also delete duplicate codes, fix codes with incorrect pricing and add inadvertently omitted codes in order to be consistent with the AMA.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 1. General Administration

Chapter 3. Electronic Billing

**§306. Electronic Medical Billing and Payment
Companion Guide**

A. - J. ...

NDAS-National Dental Advisory Service—glossary of dental benefit technology, medical terminology for TMJ and oral surgery billing, and common dental terms utilized for pricing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 39:331 (February 2013), amended LR 39:

§307. Billing Code Sets

A. - A.7. ...

8. "Physical Therapy"/"Occupational Therapy Codes: Codes specified in Title 40 of the LAC covering physical therapy and occupational therapy services.

9. - 10.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3544 (December 2011), amended LR 39:

**Chapter 41. Durable Medical Equipment and Supplies
Reimbursement Schedule, Billing
Instructions, and Maintenance
Procedures**

Editor's Note: Other Sections applying to this Chapter can be found in Chapter 51.

§4119. Maximum Allowance Schedules

A. Durable Medical Equipment

State of Louisiana Office of Workers' Compensation Schedule of Maximum Allowances for Durable Medical Equipment				
HCPCS	Description	Purchase New	Purchase Used	Rental

E0464	Press supp vent noninv int			\$2,132

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:1841 (July 2013), LR 39:

Subpart 2. Medical Guidelines

**Chapter 43. Prosthetic and Orthopedic Equipment
§4339. Schedule of Maximum Allowances and
Procedural Codes**

A. - A.3. ...

B. Prosthetic and Orthopedic Equipment

Office of Workers' Compensation Schedule of Maximum Allowances for Prosthetic and Orthopedic Equipment			
HCPCS	Description	Purchase New	

L8040	Nasal prosthesis		\$3,559
L8040	Nasal prosthesis	KM	\$3,381
L8040	Nasal prosthesis	KN	\$1,424
L8041	Midfacial prosthesis		\$4,290
L8041	Midfacial prosthesis	KM	\$4,076
L8041	Midfacial prosthesis	KN	\$1,716
L8042	Orbital prosthesis		\$4,820
L8042	Orbital prosthesis	KM	\$4,579
L8042	Orbital prosthesis	KN	\$1,928
L8043	Upper facial prosthesis		\$5,399
L8043	Upper facial prosthesis	KM	\$5,129
L8043	Upper facial prosthesis	KN	\$2,160
L8044	Hemi-facial prosthesis		\$5,977
L8044	Hemi-facial prosthesis	KM	\$56,778
L8044	Hemi-facial prosthesis	KN	\$2,391
L8045	Auricular prosthesis		\$3,933
L8045	Auricular prosthesis	KM	\$3,736
L8045	Auricular prosthesis	KN	\$1,572
L8046	Partial facial prosthesis		\$3,856
L8046	Partial facial prosthesis	KM	\$3,663
L8046	Partial facial prosthesis	KN	\$1,543
L8047	Nasal septal prosthesis		\$1,976
L8047	Nasal septal prosthesis	KM	\$1,878
L8047	Nasal septal prosthesis	KN	\$791

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:1847 (July 2013), LR 39:

Chapter 51. Medical Reimbursement Schedule

Editor's Note: The following Sections of this Chapter are applicable and shall be used for the Chapters in this Part governing reimbursement. These specific Chapters are: Chapter 25, Hospital Reimbursement; Chapter 29, Pharmacy; Chapter 31, Vision Care Services; Chapter 33, Hearing Aid Equipment and Services; Chapter 35, Nursing/Attendant Care and Home Health Services; Chapter 37, Home and Vehicle Modification; Chapter 39, Medical Transportation; Chapter 41, Durable Medical Equipment and Supplies; Chapter 43, Prosthetic and Orthopedic Equipment; Chapter 45, Respiratory Services; Chapter 47, Miscellaneous Claimant Expenses; Chapter 49, Vocational Rehabilitation Consultant; Chapter 51, Medical Reimbursement Schedule; and Chapter 53, Dental Care Services.

§5101. Statement of Policy

A. - B.3. ...

4. Statements of charges shall be made in accordance with standard coding methodology as established by these rules, ICD-9-CM, HCPCS, CPT-4, CDT-1, NDAS coding manuals. Unbundling or fragmenting charges, duplicating or over-itemizing coding, or engaging in any other practice for the purpose of inflating bills or reimbursement is strictly prohibited. Services must be coded and charged in the manner guaranteeing the lowest charge applicable. Knowingly and willfully misrepresenting services provided to workers' compensation claimants is strictly prohibited.

5.- 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:

§5127. Physical Medicine

A. - A.1.b. ...

c. services must be billed using the appropriate national CPT codes as listed in this manual.

A.2. - B.3.b. ...

C. Assessment

1. Billing. The initial, written assessment developed by the therapist must be reported to the carrier using procedure code, 97001 or 97003.

2. Reimbursement

a. Only one initial assessment per injury may be reimbursed. Reimbursement for the use of additional initial assessment time is not allowed.

b. Reimbursement for reassessment shall be recommended only once in a seven day period. Reassessment for established patients shall be billed under 97002 or 97004.

c. Assessment of the patient's status includes assessment of the neuromuscular system. Therefore, reimbursement must not be made for neuromuscular testing codes, extremity testing codes and/or range of motion codes except for those testing procedures identified by the following code: 97535 or 97755.

D. - D.1.b.ii. ...

2. Reimbursement

a. No more than one visit per day for the purpose of therapy may be reimbursed.

b. The carrier should compare the billing with the plan of care to ensure that only the services that are itemized in the plan of care are reimbursed.

c. Since the Hubbard Tank or Therapeutic Pool is designed for full body immersion, unless full body immersion is medically necessary and prescribed, Procedure Codes 97036 must not be reimbursed.

d. Prior written authorization must be obtained when billing for more than eight modalities, procedures or combination in one physical and occupational therapy session.

e. Therapeutic exercises and procedures codes 97150, 97110, 97530 are to utilized by physical therapists when billing for therapeutic exercise and procedures such as, but not limited to, joint mobilization, gait training, muscle re-education, activities of daily living, patient education, etc.

E. - F. ...

G. Fabrications of Orthotics

1. Evaluation of orthotics shall be billed according to §5127.C.

2. Fabrication and fitting of orthotics shall be billed under 97530 or 97760 as a PT/OT procedure.

3. Supplies shall be billed according to §5127.F.

H. Test and Measurements

1. Reimbursement for extremity testing, muscle testing and range of motion measurements shall be billed according to §5127.C.

2. Procedure codes 97755 shall be used when testing is performed by means of mechanical equipment. These procedure codes shall include print out of test results with report.

a. Prior authorization is required to bill 97755 if testing exceeds 30 minutes for single joint, single plane; or, 45 minutes for single joint multiple plane; or, 45 minutes for multiple joint, multiple plane for noninvolved side.

b. Prior authorization is required to bill 97755 if re-testing exceeds 15 minutes for single joint, single plane; or 30 minutes for single joint multiple plane; or, 30 minutes for multiple joint, multiple plane for noninvolved side.

I. - I.4.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:

§5157. Maximum Reimbursement Allowances

A. Table 1

Maximum Fee Allowance Schedule Office of Workers' Compensation				
CPT Code	Mod	Description	Global Days	Maximum Allowance

00635		Anesth, lumbar puncture		4 + TM
00640		Anesth, spine manipul		3 + TM

01991		Anesth nerve block/inj		3 + TM
01992		Anesth n block/inj prone		5 + TM
01996		Daily mgmt epidur/subarach drug adm		\$3
01999		Unlisted anesthesia procedre		BR

B. Table 2

Maximum Fee Allowance Schedule Office of Workers' Compensation						
CPT Code	Mod	Description	Global Days	Maximum Allowance	Non-Facility Maximum	Facility Maximum
* * *						
21116		Injection, jaw joint X-ray	0	\$114		
21120		Reconstruction of chin	90	\$620		
* * *						
24071		Exc arm/elbow les sc 3 cm/>	90	\$843		
24073		Exc arm/elbow les sc 3 cm/>	90	\$1438		
24075		Ex arm/elbow tum deep 5 cm/>	90	\$433		
24076		Remove arm/elbow lesion	90	\$734		
24077		Remove tumor of arm/elbow	90	\$1,617		
* * *						
31750		Repair of windpipe	90	\$1,347		
31755		Repair of windpipe	90	\$3,686		
31760		Repair of windpipe	90	\$2,432		
* * *						
33692		Repair of heart defects	90	\$3,874		
33694		Repair of heart defects	90	\$4,153		
* * *						
35876		Removal of clot in graft	90	\$1,612		
35879		Revise graft w/vein	90	\$2,022		
* * *						
38780		Remove abdomen lymph nodes	90	\$2,432		
38790		Inject for lymphatic X ray	0	\$757		
* * *						
51727		Cystometrogram w/up	0	\$425		
51728	26	Cystometrogram w/vp	0	\$217		
51728	TC	Cystometrogram w/vp	0	\$431		
51728		Cystometrogram w/vp	0	\$648		
51729	26	Cystometrogram w/vp&up	0	\$264		
51729	TC	Cystometrogram w/vp&up	0	\$442		
51729		Cystometrogram w/vp&up	0	\$707		
* * *						
58290		Vag hyst complex	90	\$2,434		
58291		Vag hyst incl t/o complex	90	\$2,637		
58292		Vag hyst t/o & repair compl	90	\$2,785		
58294		Vag hyst w/enterocele compl	90	\$2,582		
58300		Insert intrauterine device	0	\$136		
58301		Remove intrauterine device	0	\$90		
* * *						
58346		Insert heyman uteri capsule	90	\$937		
* * *						
58353		Endometr ablate thermal	10		\$2,065	\$459
58356		Endometrial cryoablation	10		\$3,878	\$727
* * *						
63268		Excise intraspinal lesion	90	\$2,286		
63270		Excise intraspinal lesion	90	\$3,285		
* * *						
64565		Implant neuroelectrodes	10	\$181		
64566		Neuroeltrd stim post tibial		\$275		
* * *						
70492	TC	Contrast cat of neck tissue		\$507		
70496	26	Ct angiography head		\$174		
70496	TC	Ct angiography head		\$881		
70496		Ct angiography head		\$1,055		
70498	26	Ct angiography neck		\$174		
70498	TC	Ct angiography neck		\$919		
70498		Ct angiography neck		\$1,093		
70540		Magnetic image, face, neck		\$963		
70540	26	Magnetic image, face, neck		\$159		
70540	TC	Magnetic image, face, neck		\$804		
70542	26	Mri orbit/face/neck w/dye		\$161		
70542	TC	Mri orbit/face/neck w/dye		\$807		
70542		Mri orbit/face/neck w/dye		\$969		

Maximum Fee Allowance Schedule Office of Workers' Compensation						
CPT Code	Mod	Description	Global Days	Maximum Allowance	Non-Facility Maximum	Facility Maximum
70543	26	Mri orbit/fac/nck w/o & w/dye		\$213		
70543	TC	Mri orbit/fac/nck w/o & w/dye		\$966		
70543		Mri orbit/fac/nck w/o & w/dye		\$1,180		
70544	26	Mr angiography head w/o dye		\$120		
70544	TC	Mr angiography head w/o dye		\$849		
70544		Mr angiography head w/o dye		\$969		
70545	26	Mr angiography head w/dye		\$119		
70545	TC	Mr angiography head w/dye		\$829		
70545		Mr angiography head w/dye		\$948		
70546	26	Mr angiograph head w/o&w/dye		\$180		
70546	TC	Mr angiograph head w/o&w/dye		\$1,281		
70546		Mr angiograph head w/o&w/dye		\$1,461		
70547	26	Mr angiography neck w/o dye		\$120		
70547	TC	Mr angiography neck w/o dye		\$849		
70547		Mr angiography neck w/o dye		\$968		
70548	26	Mr angiography neck w/dye		\$120		
70548	TC	Mr angiography neck w/dye		\$910		
70548		Mr angiography neck w/dye		\$1,030		
70549	26	Mr angiograph neck w/o&w/dye		\$179		
70549	TC	Mr angiograph neck w/o&w/dye		\$1,286		
70549		Mr angiograph neck w/o&w/dye		\$1,465		
70551		Magnetic image, brain		\$963		
70551	26	Magnetic image, brain		\$159		
70551	TC	Magnetic image, brain		\$804		
70552		Magnetic image, brain		\$1,155		
70552	26	Magnetic image, brain		\$192		
70552	TC	Magnetic image, brain		\$964		
70553		Magnetic image, brain		\$2,039		
70553	26	Magnetic image, brain		\$255		
70553	TC	Magnetic image, brain		\$1,785		
70554	26	Fmri brain by tech		\$211		
70554	TC	Fmri brain by tech		\$818		
70554		Fmri brain by tech		\$1,029		
70555		Fmri brain by phys/psych		\$261		
70557		Mri brain w/o dye		\$348		
70558		Mri brain w/dye		\$327		
70559		Mri brain w/o & w/dye		\$330		
71275		Ct angiography chest		\$836		
71550		Magnetic image, chest		\$976		
* * *						
71550	TC	Magnetic image, chest		\$804		
71551	26	Mri chest w/dye		\$173		
71551	TC	Mri chest w/dye		\$944		
71551		Mri chest w/dye		\$1,117		
71552	26	Mri chest w/o & w/dye		\$224		
71552	TC	Mri chest w/o & w/dye		\$1,165		
71552		Mri chest w/o & w/dye		\$1,389		
71555		Magnetic imaging/chest		\$991		
72191		Ct angiograph pelv w/o&w/dye		\$885		
72192		Cat scan of pelvis		\$540		
* * *						
74301	TC	X-rays at surgery add- on		BR		
74305		X-ray bile ducts, pancreas		\$102		
* * *						
78282	TC	Gi protein loss exam		BR		
78290		Meckel's divert exam		\$292		
* * *						
78414	TC	Non-imaging heart function		BR		
78428		Cardiac shunt imaging		\$246		
* * *						
88363		Xm archive tissue molec anal			\$73	\$32
* * *						
92240	TC	Icg angiography.....		\$77		
92250		Eye exam with photos		\$63		

Maximum Fee Allowance Schedule Office of Workers' Compensation						
CPT Code	Mod	Description	Global Days	Maximum Allowance	Non-Facility Maximum	Facility Maximum
92250	26	Eye exam with photos		\$49		
92250	TC	Eye exam with photos		\$13		
92260		Ophthalmoscopy/dynamometry		\$77		

93279	26	Pm device progr eval snpl		\$34		

99143		Mod cs by same phys < 5 yrs		BR		
99144		Mod cs by same phys 5 yrs +		BR		
99145		Mod cs by same phys add-on		BR		
99148		Mod cs diff phys < 5 yrs		BR		
99149		Mod cs diff phys 5 yrs +		BR		
99150		Mod cs diff phys add-on		BR		

99301		Nursing facility care		\$121		
99302		Nursing facility care		\$156		
99303		Nursing facility care		\$213		
99304		Nursing facility care init		\$190		
99305		Nursing facility care init		\$270		
99306		Nursing facility care init		\$342		
99307		Nursing fac care subseq		\$90		
99308		Nursing fac care subseq		\$140		
99309		Nursing fac care subseq		\$184		
99310		Nursing fac care subseq		\$273		
99311		Nursing fac care, subseq		\$68		
99312		Nursing fac care, subseq		\$102		
99313		Nursing fac care, subseq		\$138		
99315		Nursing fac discharge day		\$120		

99385		Preventive visit,new,18-39			\$264	\$198

99396		Preventive visit,est,40-64		\$255		

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), LR 27:314 (March 2001), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:1854 (July 2013), LR 39:

Chapter 53. Dental Care Services, Reimbursement Schedule and Billing Instructions

Editor's Note: Other Sections applying to this Chapter can be found in Chapter 51.

§5315. Coding System

A. - A.4. ...

(312) 440-2500

5. NDAS Manual

National Dental Advisory Service
P.O. Box 510949
Milwaukee, WI 53203
(800) 669-3337

6. Relative Values for Dentists

Relative Value Studies, Inc.
P.O. Box 6431
Denver, Colorado 80206
(303) 329-9787

B. CDT-1 Coding

1. For convenience, the current *Dental Terminology*, First Edition (CDT-1) procedure codes are divided into 12 categories of service. Additional coding systems such as ICD-9, CPT, HCPCS and NDAS coding may also be used in the dental office.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:1166 (September 1993), amended LR 20:1298 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:

§5321. Maximum Allowable Reimbursement

A. ...

1. the seventieth percentile in the current edition of the National Dental Advisory Service (NDAS) Comprehensive Fee Report, utilizing the average of geographic multipliers for Louisiana as published in the NDAS report;

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:1167 (September 1993), amended LR 20:1298 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:

§5399. Schedule for Maximum Allowances for Dental Services

CDT Code	Description	Maximum Reimbursement
D0120	Periodic oral evaluation—established patient	50
D0140	Limited oral evaluation—problem focused	75
D0145	Oral evaluation—patient under 3yrs & counseling with primary caregiver	69
D0150	Comprehensive oral evaluation—new or established patient	88
D0160	Detailed & Extensive oral evaluation—problem focused, by report	160
D0170	Re-evaluation—limited, problem focused (established patient; not post-operative visit)	70
D0180	Comprehensive periodontal evaluation—new or established patient	95
D0210	Intraoral—complete series (including bitewings)	128
D0220	Intraoral—periapical first film	28
D0230	Intraoral—periapical each additional film	24
D0240	Intraoral—occlusal films	42
D0250	Intraoral—first film	67
D0260	Extraoral—first film	55
D0270	Bitewing—single film	28
D0272	Bitewing—two films	45
D0273	Bitewing—three films	55
D0274	Bitewing—four films	65
D0277	Vertical bitewings—7 to 8 films	97
D0290	Posterior-anterior or lateral skull & facial bone survey film	135
D0310	Sialography	389
D0320	Temporomandibular joint films, including injection	592
D0321	Other temporomandibular joint films, by report	210
D0322	Tomographic survey	530
D0330	Panoramic film	110
D0340	Cephalometric film	125
D0350	Oral/facial photographic images	71
D0360	Cone beam CT—craniofacial data capture	589
D0362	Cone beam CT—two-dimensional image reconstruction using existing data, includes multiple images	359
D0363	Cone beam CT—three-dimensional image reconstruction using existing data, includes multiple images	398
D0415	Collection of microorganisms for culture and sensitivity	186
D0416	Viral culture	168
D0417	Collection and preparation of saliva sample for laboratory diagnostic testing	167
D0418	Analysis of saliva sample	150
D0421	Genetic test for susceptibility to oral diseases	136
D0425	Caries susceptibility tests	95
D0431	Adjunctive pre-diagnostic test that aids in detection of mucosal abnormalities including premalignant and malignant lesions, not to include cytology or biopsy procedures	71
D0460	Pulp vitality tests	55
D0470	Diagnostic casts	109
D0472	Accession of tissue, gross examination, preparation and transmission of written report	118
D0473	Accession of tissue, gross examination and microscopic examination, preparation and transmission of written report	165

CDT Code	Description	Maximum Reimbursement
D0474	Accession of tissue, gross examination and microscopic examination including assessment of surgical margins for presence of disease, preparation and transmission of written report	184
D0480	Accession of exfoliative cytologic smears, microscopic examination, preparation and transmission of written report	176
D0486	Accession of transepithelial cytologic sample, microscopic examination, preparation and transmission of written report	150
D0475	Decalcification procedure	195
D0476	Special stains for microorganisms	289
D0477	Special stains not for microorganisms	296
D0478	Immunohistochemical stains	175
D0479	Tissue in-situ hybridization, including interpretation	231
D0481	Electron microscopy—diagnostic	188
D0482	Direct immunofluorescence	105
D0483	Indirect immunofluorescence	123
D0484	Consultation on slides prepared elsewhere	168
D0485	Consultation, including preparation of slides from biopsy material supplied by referring source	180
D0502	Other oral pathology procedures, by report	170
D0999	Unspecified diagnostic procedure, by report	IR
D1110	Prophylaxis—adult	90
D1120	Prophylaxis—child	66
D1203	Topical application of fluoride—child	37
D1204	Topical application of fluoride—adult	37
D1206	Topical fluoride varnish; therapeutic application for moderate to high caries risk patients	45
D1310	Nutritional counseling for control of dental disease	70
D1320	Tobacco counseling for the control and prevention of oral disease	82
D1330	Oral hygiene instructions	55
D1351	Sealant—per tooth	54
D1352	Preventative resin restoration in a moderate to high caries risk patient—permanent tooth	IR
D1510	Space maintainer—fixed—unilateral	317
D1515	Space maintainer—fixed—bilateral	432
D1520	Space maintainer—removable—unilateral	390
D1525	Space maintainer—removable—bilateral	495
D1550	Re-cementation of space maintainer	83
D1555	Removal of fixed space maintainer	79
D2140	Amalgam—one surface, primary or permanent	138
D2150	Amalgam—two surfaces, primary or permanent	176
D2160	Amalgam—three surfaces, primary or permanent	214
D2161	Amalgam—four surfaces, primary or permanent	251
D2330	Resin-based composite—one surface, anterior	160
D2331	Resin-based composite—two surfaces, anterior	200
D2332	Resin-based composite—three surfaces, anterior	249
D2335	Resin-based composite—four or more surfaces or involving incisal angle (anterior)	312
D2390	Resin-based composite crown—anterior	450
D2391	Resin-based composite—one surface, posterior	177
D2392	Resin-based composite—two surfaces, posterior	230

CDT Code	Description	Maximum Reimbursement
D2393	Resin-based composite—three surfaces, posterior	284
D2394	Resin-based composite—four or more surfaces posterior	341
D2410	Gold foil—one surface	635
D2420	Gold foil—two surfaces	692
D2430	Gold foil—three surfaces	806
D2510	Inlay—metallic—one surface	833
D2520	Inlay—metallic—two surfaces	892
D2530	Inlay—metallic—three or more surfaces	965
D2542	Onlay—metallic—two surfaces	990
D2543	Onlay—metallic—three surfaces	1015
D2544	Onlay—metallic—four or more surfaces	1050
D2610	Inlay—porcelain/ceramic—one surface	907
D2620	Inlay—porcelain/ceramic—two surfaces	950
D2630	Inlay—porcelain/ceramic—three or more surfaces	995
D2642	Onlay—porcelain/ceramic—two surfaces	1008
D2643	Onlay—porcelain/ceramic—three surfaces	1049
D2644	Onlay—porcelain/ceramic—four or more surfaces	1094
D2650	Inlay—resin based—one surface	869
D2651	Inlay—resin based—two surfaces	904
D2652	Inlay—resin based—three or more surfaces	940
D2662	Onlay—resin based—two surfaces	944
D2663	Onlay—resin based—three surfaces	983
D2664	Onlay—resin based—four or more surfaces	1025
D2710	Crown—resin-based composite (indirect)	940
D2712	Crown—3/4 resin-based composite (indirect)	999
D2720	Crown—resin with high noble metal	1061
D2721	Crown—resin with predominantly base metal	998
D2722	Crown—resin with noble metal	1015
D2740	Crown—porcelain/ceramic substrate	1132
D2750	Crown—porcelain fused to high noble metal	1100
D2571	Crown—porcelain fused predominantly base metal	1029
D2752	Crown—porcelain fused to noble metal	1050
D2780	Crown—3/4 cast high noble metal	1063
D2781	Crown—3/4 cast predominantly base metal	1027
D2782	Crown—3/4 cast noble metal	1030
D2783	Crown—3/4 porcelain /ceramic	1100
D2790	Crown—full cast high noble metal	1100
D2791	Crown—full cast predominantly base metal	997
D2792	Crown—full cast noble metal	1045
D2794	Crown—titanium	1076
D2799	Provisional crown	437
D2910	Recent inlay, only, or partial coverage restoration	108
D2915	Recent cast or prefabricated post and core	114
D2920	Recent crown	109
D2930	Prefabricated stainless steel crown—primary tooth	271
D2931	Prefabricated stainless steel crown—permanent tooth	325
D2932	Prefabricated resin crown	351
D2933	Prefabricated stainless steel crown with resin window	363
D2934	Prefabricated esthetic coated stainless tell crown—primary tooth	372
D2940	Protective restoration	120
D2950	Core buildup, including any pins	271
D2951	Pin retention—per tooth, in addition to restoration	75
D2952	Post and core in addition to crown, indirectly fabricated	422
D2953	Each additional indirectly fabricated post—same tooth	312

CDT Code	Description	Maximum Reimbursement
D2954	Prefabricated post and core in addition to crown	335
D2955	Post removal (not in conjunction with endodontic therapy)	291
D2957	Each additional prefabricated post—same tooth	200
D2960	Labial veneer (resin laminate)—chairside	658
D2961	Labial veneer (resin laminate)—laboratory	975
D2962	Labial veneer (porcelain laminate)—laboratory	1150
D2970	Temporary crown (fractured tooth)	375
D2971	Additional procedures to construct new crown under existing partial denture framework	169
D2975	Coping	597
D2980	Crown repair, by report	293
D2999	Unspecified restorative procedure, by report	IR
D3110	Pulp cap—direct (excluding final restoration)	83
D3120	Pulp cap—indirect (excluding final restoration)	84
D3220	Therapeutic pulpotomy (excluding final restoration)—removal of pulp coronal to the dentinocemental junction and application of medicament	198
D3221	Pulpal debridement, primary and permanent teet	234
D3222	Partial pulpotomy for apexogenesis—permanent tooth with incomplete root development	298
D3230	Pulpal therapy (resorbable filling)—anterior , primary tooth (excluding final restoration)	275
D3240	Pulpal therapy (resorbable filling)—posterior , primary tooth (excluding final restoration)	312
D3310	Endodontic therapy, anterior tooth (excluding final restoration)	725
D3320	Endodontic therapy, bicuspid tooth (excluding final restoration)	842
D3330	Endodontic therapy, molar tooth (excluding final restoration)	1009
D3331	Treatment of root canal obstruction: non-surgical access	611
D3332	Incomplete endodontic therapy; inoperable, unrestorable or fractured tooth	444
D3333	Internal root repari of perforation defects	350
D3346	Retreatment of previous root canal therapy—anterior	850
D3347	Retreatment of previous root canal therapy—bicuspid	970
D3348	Retreatment of previous root canal therapy—molar	1132
D3351	Apexification/recalcification/pulpal regeneration—initial visit (apical closure/calcific repair of perforations, root resorption, pulp space disinfection, etc)	362
D3352	Apexification/recalcification/pulpal regeneration—interim medication replacement (apical closure/calcific repair of perforations, root resorption, pulp space disinfection, etc)	258
D3353	Apexification/recalcification/pulpal regeneration—final visit (includes completed root canal therapy—apical closure/calcific repair of perforations, root resorption, pulp space disinfection, etc)	542
D3354	Pupal regeneration—(completion of regenerative treatment in an immature permanent tooth with a necrotic pulp); does not include final restoration	IR
D3410	Apicoectomy/periradicular surgery— anterior	700

CDT Code	Description	Maximum Reimbursement
D3421	Apicoectomy/periradicular surgery—bicuspid (first root)	780
D3425	Apicoectomy/periradicular surgery—molar (first root)	895
D3426	Apicoectomy/periradicular surgery—(each additional root)	400
D3430	Retrograde filling—per root	280
D3450	Root amputation—per root	483
D3460	Endodontic endosseous implant	1524
D3470	Intentional reimplantation (including necessary splinting)	796
D3910	Surgical procedure for isolation of tooth with rubber dam	235
D3920	Hemisection (including any root removal), not including root canal therapy	474
D3950	Canal preparation and fitting of preformed dowel or post	258
D3999	Unspecified endodontic procedure, by report	IR
D4210	Gingivectomy or gingivoplasty—four or more contiguous teeth or tooth bounded spaces per quadrant	626
D4211	Gingivectomy or gingivoplasty—one to three contiguous teeth or tooth bounded spaces per quadrant	290
D4230	Anatomical crown exposure—four or more contiguous teeth per quadrant	698
D4231	Anatomical crown exposure—one to three contiguous teeth per quadrant	596
D4240	Gingival flap procedure, including root planing—one to three contiguous teeth or tooth bounded spaces per quadrant	738
D4241	Gingival flap procedure, including root planing—four or more contiguous teeth or tooth bounded spaces per quadrant	635
D4245	Apically positioned flap	819
D4249	Clinical crown lengthening—hard tissue	751
D4260	Osseous surgery (including flap entry and closure)—four or more contiguous teeth or tooth bounded spaces per quadrant	1074
D4261	Osseous surgery (including flap entry and closure)—one to three contiguous teeth or tooth bounded spaces per quadrant	890
D4263	Bone replacement graft—each additional site in quadrant	727
D4264	Bone replacement graft—first site in quadrant	555
D4265	Biologic materials to aid in soft and osseous tissue regeneration	550
D4266	Guided tissue regeneration—resorbable barrier, per site	831
D4267	Guided tissue regeneration—nonresorbable barrier, per site (includes membrane removal)	984
D4268	Surgical revision procedure, per tooth	810
D4270	Pedical soft tissue graft procedure	826
D4271	Free soft tissue graft procedure (including donor site surgery)	895
D4273	Subepithelial connective tissue graft procedures, per tooth	1088
D4274	Distal or proximal wedge procedure (when not performed in conjunction with surgical procedures in the same anatomical area)	670
D4275	Soft tissue allograft	969
D4276	Combined connective tissue and double pedicle graft, per tooth	1085
D4320	Provisional splinting—intracoronal	508
D4321	Provisional splinting—extracoronal	466
D4341	Periodontal scaling and root planing—four or more teeth per quadrant	251
D4342	Periodontal scaling and root planing—one to three teeth per quadrant	185

CDT Code	Description	Maximum Reimbursement
D4355	Full mouth debridement to enable comprehensive evaluation and diagnosis	183
D4381	Localized delivery of antimicrobial agents via a controlled release vehicle into diseased crevicular tissue, per tooth, by report	140
D4910	Periodontal maintenance	139
D4920	Unscheduled dressing change (by someone other than treating dentist)	100
D4999	Unspecified periodontal procedure, by report	IR
D5110	Complete denture—maxillary	1689
D5120	Complete denture—mandibular	1700
D5130	Immediate denture—maxillary	1831
D5140	Immediate denture—mandibular	1849
D5211	Maxillary partial denture—resin base (including any conventional clasps, rests and teeth)	1350
D5212	Mandibular partial denture—resin base (including any conventional clasps, rests and teeth)	1350
D5213	Maxillary partial denture—cast base framework with resin denture bases (including any conventional clasps, rests and teeth)	1781
D5214	Mandibular partial denture—cast base framework with resin denture bases (including any conventional clasps, rests and teeth)	1780
D5225	Maxillary partial denture—flexible base (including any clasps, rests and teeth)	1566
D5226	Mandibular partial denture—flexible base (including any clasps, rests and teeth)	1552
D5281	Removable unilateral partial denture—one piece cast metal (including clasps and teeth)	995
D5410	Adjust complete denture—maxillary	89
D5411	Adjust complete denture—mandibular	88
D5421	Adjust partial denture—maxillary	88
D5422	Adjust partial denture—mandibular	88
D5510	Repair broken complete denture base	208
D5520	Replace missing or broken teeth—complete denture (each tooth)	186
D5610	Repair resin denture base	202
D5620	Repair cast framework	291
D5630	Repair or replace broken clasp	262
D5640	Replace broken teeth—per tooth	184
D5650	Add tooth to existing partial denture	224
D5660	Add clasp to existing partial denture	268
D5670	Replace all teeth and acrylic on cast metal framework (maxillary)	735
D5671	Replace all teeth and acrylic on cast metal framework (mandibular)	750
D5710	Rebase complete maxillary denture	591
D5711	Rebase complete mandibular denture	585
D5720	Rebase maxillary partial denture	563
D5721	Rebase mandibular partial denture	562
D5730	Reline complete maxillary denture (chairside)	372
D5731	Reline complete mandibular denture (chairside)	369
D5740	Reline maxillary partial denture (chairside)	364
D5741	Reline mandibular partial denture (chairside)	368
D5750	Reline complete maxillary denture (laboratory)	475
D5751	Reline complete mandibular denture (laboratory)	475
D5760	Reline maxillary partial denture (laboratory)	469
D5761	Reline mandibular partial denture (laboratory)	472

CDT Code	Description	Maximum Reimbursement
D5810	Interim complete denture (maxillary)	848
D5811	Interim complete denture (mandibular)	853
D5820	Interim partial denture (maxillary)	690
D5821	Interim partial denture (mandibular)	690
D5850	Tissue conditioning, maxillary	204
D5851	Tissue conditioning, mandibular	205
D5860	Overdenture—complete, by report	2121
D5861	Overdenture—partial, by report	2048
D5862	Precision attachment, by report	700
D5867	Replacement of replaceable part of semi-precision or precision attachment (male or female component)	385
D5875	Modification of removable prosthesis following implant surgery	393
D5899	Unspecified removable prosthodontic procedure, by report	IR
D5911	Facial moulage (sectional)	IR
D5912	Facial moulage (complete)	IR
D5913	Nasal prosthesis	IR
D5914	Auricular prosthesis	IR
D5915	Orbital prosthesis	IR
D5916	Ocular prosthesis	IR
D5919	Facial prosthesis	IR
D5923	Ocular prosthesis, interim	IR
D5924	Cranial prosthesis	IR
D5925	Facial augmentation implant prosthesis	IR
D5926	Nasal prosthesis, replacement	IR
D5957	Auricular prosthesis, replacement	IR
D5958	Orbital prosthesis, replacement	IR
D5929	Facial prosthesis, replacement	IR
D5931	Obturator prosthesis, surgical	IR
D5932	Obturator prosthesis, definitive	IR
D5933	Obturator prosthesis, modification	IR
D5934	Mandibular resection prosthesis with guide flange	IR
D5935	Mandibular resection prosthesis without guide flange	IR
D5936	Obturator prosthesis interim	IR
D5937	Trismus appliance (not for TMD treatment)	746
D5951	Feeding aid	844
D5952	Speech aid prosthesis, pediatric	IR
D5953	Speech aid prosthesis, adult	IR
D5954	Palatal augmentation prosthesis	IR
D5955	Palatal lift prosthesis, definitive	IR
D5958	Palatal lift prosthesis, interim	IR
D5959	Palatal lift prosthesis, modification	IR
D5960	Speech aid prosthesis modification	IR
D5982	Surgical stent	450
D5983	Radiation carrier	IR
D5984	Radiation shield	IR
D5985	Radiation cone locator	IR
D5986	Fluoride gel carrier	210
D5987	Commissure splint	IR
D5988	Surgical splint	770
D5991	Topical medicament carrier	226
D5992	Adjust maxillofacial prosthetic appliance, by report	IR
D5993	Maintenance and cleaning of maxillofacial prosthesis (extra or intraoral) other than required adjustments, by report	IR
D5999	Unspecified maxillofacial prosthesis, by report	IR
D6190	Radiographic/surgical implant index, by report	375
D6010	Surgical placement of implant body: endosteal implant	2001
D6012	Surgical placement of interim implant body for transitional prosthesis: endosteal implant	1577
D6040	Surgical placement: eposteal implant	8380

CDT Code	Description	Maximum Reimbursement
D6050	Surgical placement: transosteal implant	5807
D6100	Implant removal, by report	760
D6055	Connecting bar—implant supported abutment support	2900
D6506	Prefabricated abutment—includes placement	789
D6057	Custom abutment—includes placement	952
D6053	Implant/abutment supported removable denture for completely edentulous arch	2790
D6054	Implant/abutment supported removable denture for partially edentulous arch	2751
D6078	Implant/abutment supported fixed denture for completely edentulous arch	5335
D6079	Implant/abutment supported fixed denture for partially edentulous arch	3800
D6058	Abutment supported porcelain/ceramic crown	1479
D6059	Abutment supported porcelain/ceramic crown (high noble metal)	1479
D6060	Abutment supported porcelain fused to metal crown (predominantly base metal)	1361
D6061	Abutment supported porcelain fused to metal crown (noble metal)	1382
D6062	Abutment supported cast metal crown (high noble metal)	1432
D6063	Abutment supported cast metal crown (predominantly base metal)	1317
D6064	Abutment supported cast metal crown (noble metal)	1366
D6094	Abutment supported crown—(titanium)	1376
D6065	Implant supported porcelain/ceramic crown	1543
D6066	Implant supported porcelain fused to metal crown (titanium, titanium alloy, high noble metal)	1545
D6067	Implant supported metal crown (titanium, titanium alloy, high noble metal)	1575
D6068	Abutment supported retainer for porcelain/ceramic FPD	1469
D6069	Abutment supported retainer for porcelain fused to metal FPD (high noble metal)	1474
D6070	Abutment supported retainer for porcelain fused to metal FPD (predominantly base metal)	1384
D6071	Abutment supported retainer for porcelain fused to metal FPD (noble metal)	1384
D6072	Abutment supported retainer for cast metal FPD (high noble metal)	1451
D6073	Abutment supported retainer for porcelain cast metal FPD (predominantly base metal)	1384
D6074	Abutment supported retainer for cast metal FPD (noble metal)	1384
D6194	Abutment supported retainer crown for FPD (titanium)	1392
D6075	Implant supported retainer for ceramic FPD	1529
D6076	Implant supported retainer for porcelain fused to metal FPD (titanium, titanium alloy or high noble metal)	1538
D6077	Implant supported retainer for cast metal FPD (titanium, titanium alloy or high noble metal)	1587
D6080	Implant maintenance procedures, including removal of prosthesis, cleansing of prosthesis and abutments and reinsertion of prosthesis	297
D6090	Repair implant supported prosthesis, by report	742
D6095	Repair implant abutment, by report	731
D6091	Replacement of semi-precious or precision attachment (male or female component) of implant/abutment supported prosthesis, per attachment	631

CDT Code	Description	Maximum Reimbursement
D6092	Recent implant/abutment supported crown	160
D6093	Recent implant/abutment supported fixed partial denture	182
D6199	Unspecified implant procedure, by report	IR
D6205	Pontic—indirect resin based composite	988
D6210	Pontic—cast high noble metal	1089
D6211	Pontic—cast predominately base metal	998
D6212	Pontic—cast noble metal	1041
D6214	Pontic—titanium	1100
D6240	Pontic—porcelain fused to high noble metal	1100
D6241	Pontic—porcelain fused to predominantly base metal	1024
D6242	Pontic—porcelain fused to noble metal	1051
D6245	Pontic—porcelain/ceramic	1140
D6250	Pontic—resin with high noble metal	1058
D6251	Pontic—resin with predominantly base metal	1049
D6252	Pontic—resin with noble metal	1040
D6253	Provisional pontic	769
D6254	Interim pontic	IR
D6545	Retainer—cast metal for resin bonded fixed prosthesis	852
D6548	Retainer—porcelain/ceramic for resin bonded fixed prosthesis	950
D6600	Inlay—porcelain/ceramic, two surfaces	1000
D6601	Inlay—porcelain/ceramic, three or more surfaces	1052
D6602	Inlay—cast high noble metal, two surfaces	1015
D6603	Inlay—cast high noble metal, three or more surfaces	1050
D6604	Inlay—predominantly base metal, two surfaces	994
D6605	Inlay—predominantly base metal, three or more surfaces	1046
D6606	Inlay—cast noble metal, two surfaces	998
D6607	Inlay—cast noble metal, three or more surfaces	1050
D6624	Inlay—titanium	1080
D6608	Onlay—porcelain/ceramic, two surfaces	1061
D6609	Onlay—porcelain/ceramic, three or more surfaces	1127
D6610	Onlay—cast high noble metal, two surfaces	1074
D6611	Onlay—cast high noble metal, three or more surfaces	1111
D6612	Onlay—predominantly base metal, two surfaces	1038
D6613	Onlay—predominantly base metal, three or more surfaces	1095
D6614	Onlay—cast noble metal, two surfaces	1050
D6615	Onlay—cast noble metal, three or more surfaces	1102
D6634	Onlay—titanium	1125
D6710	Crown—indirect resin based composite	1025
D6720	Crown—resin with high noble metal	1056
D6721	Crown—resin with predominantly base metal	1032
D6722	Crown—resin with noble metal	1050
D6740	Crown—porcelain/ceramic	1146
D6750	Crown—porcelain fused to high noble metal	1107
D6751	Crown—porcelain fused to predominantly base metal	1010
D6752	Crown—porcelain fused to noble metal	1050
D6780	Crown—3/4 cast high noble metal	1075
D6781	Crown—3/4 cast predominantly base metal	1038
D6782	Crown—3/4 cast noble metal	1050
D6783	Crown—3/4 porcelain/ceramic	1100
D6790	Crown—full cast high noble metal	1085
D6791	Crown—full cast predominantly base metal	997
D6792	Crown—full cast noble metal	1040

CDT Code	Description	Maximum Reimbursement
D6794	Crown—titanium	1059
D6793	Provisional retainer crown	523
D6795	Interim retainer crown	IR
D6920	Connector bar	995
D6930	Recent fixed partial denture	171
D6940	Stress breaker	435
D6950	Precision attachment	650
D6970	Post and core in addition to fixed partial denture retainer, indirectly fabricated	433
D6972	Prefabricated post and core in addition to fixed partial denture retainer	344
D6973	Core build up for retainer, including any pins	275
D6975	Coping—metal	700
D6976	Each additional indirectly fabricated post—same tooth	290
D6977	Each additional prefabricated post—same tooth	204
D6980	Fixed partial denture repair, by report	387
D6985	Pediatric partial denture, fixed	915
D6999	Unspecified fixed prosthodontic procedure, by report	IR
D7111	Extraction, coronal remnants—deciduous tooth	135
D7140	Extraction, erupted tooth or exposed root (elevation and/or forceps removal)	174
D7210	Surgical removal of erupted tooth requiring removal of bone and/or sectioning of tooth, and including elevation of mucoperiosteal flap if indicated	275
D7220	Removal of impacted tooth—soft tissue	315
D7230	Removal of impacted tooth—partially bony	395
D7240	Removal of impacted tooth—completely bony	484
D7241	Removal of impacted tooth—completely bony, with unusual surgical complications	576
D7250	Surgical removal of residual tooth roots (cutting procedure)	304
D7251	Coronectomy—intentional partial tooth removal	IR
D7260	Oroantral fistula closure	1026
D7261	Primary closure of a sinus perforation	757
D7270	Tooth reimplantation and/or stabilization of accidentally avulsed or displaced tooth	561
D7272	Tooth transplantation (includes reimplantation from one site to another and splinting and/or stabilization)	746
D7280	Surgical access of an unerupted tooth	482
D7282	Mobilization of erupted or malpositioned tooth to aid eruption	526
D7283	Placement of device to facilitate eruption of impacted tooth	523
D7285	Biopsy of oral tissue—hard (bone, tooth)	437
D7286	Biopsy of oral tissue—soft	320
D7287	Exfoliative cytological sample collection	184
D7288	Brush biopsy—transepithelial sample collection	195
D7290	Surgical repositioning of teeth	528
D7291	Transseptal fibrotomy/surpa crestal fibrotomy, by report	315
D7292	Surgical placement: temporary anchorage device [screw retained plate] requiring surgical flap	3300
D7293	Surgical placement: temporary anchorage device requiring surgical flap	2528
D7294	Surgical placement: temporary anchorage device without surgical flap	1619
D7295	Harvest of bone for use in autogenous grafting procedure	IR
D7310	Alveoplasty in conjunction with extractions—four or more teeth or tooth spaces, per quadrant	295

CDT Code	Description	Maximum Reimbursement
D7311	Alveoplasty in conjunction with extractions—one to three teeth or tooth spaces, per quadrant	309
D7320	Alveoplasty not in conjunction with extractions—four or more teeth or tooth spaces, per quadrant	443
D7321	Alveoplasty not in conjunction with extractions—one to three teeth or tooth spaces, per quadrant	437
D7340	Vestibuloplasty—ridge extension (secondary epithelialization)	1164
D7350	Vestibuloplasty—ridge extension (including soft tissue graft, muscle reattachment, revision of soft tissue attachment and management of hypertrophied and hyperplastic tissue)	2467
D7410	Excision of benign lesion up to 1.25 cm	415
D7411	Excision of benign lesion greater than 1.25 cm	630
D7412	Excision of benign lesion, complicated	850
D7413	Excision of malignant lesion greater than 1.25 cm	751
D7414	Excision of malignant lesion up to 1.25 cm	1132
D7415	Excision of malignant lesion, complicated	1253
D7465	Destruction of lesion(s) by physical or chemical method, by report	459
D7440	Excision of malignant tumor—lesion diameter up to 1.25cm	720
D7441	Excision of malignant tumor—lesion greater than 1.25cm	1224
D7450	Removal of benign odontogenic cyst or tumor—lesion diameter up to 1.25cm	588
D7451	Removal of benign odontogenic cyst or tumor—lesion diameter greater than 1.25cm	782
D7460	Removal of benign nonodontogenic cyst or tumor—lesion diameter greater than 1.25cm	573
D7461	Removal of benign nonodontogenic cyst or tumor—lesion diameter up to 1.25cm	874
D7470	Removal of lateral exostosis (maxilla or mandible)	653
D7472	Removal of torus palatinus	859
D7473	Removal of torus mandibularis	761
D7485	Surgical reduction of osseous tuberosity	755
D7490	Radial resection of maxilla or mandible	8006
D7510	Incision and drainage of abscess—extraoral soft tissue	236
D7511	Incision and drainage of abscess—extraoral soft tissue—complicated (includes drainage of multiple fascial spaces)	367
D7520	Incision and drainage of abscess—extraoral tissue	169
D7521	Incision and drainage of abscess—extraoral tissue—complicated (includes drainage of multiple fascial spaces)	630
D7530	Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue	364
D7540	Removal of reaction producing foreign bodies, musculoskeletal system	708
D7550	Partial osteotomy/sequestrectomy for removal of non-vital bone	600
D7560	Maxillary sinusotomy for removal of tooth fragment or foreign body	1308
D7610	Maxilla—open reduction (teeth immobilized, if present)	4464
D7620	Maxilla—closed reduction (teeth immobilized, if present)	3450
D7630	Mandible—open reduction (teeth immobilized, if present)	4576
D7640	Mandible—closed reduction (teeth immobilized, if present)	3483
D7650	Malar and/or zygomatic arch—open reduction	3924

CDT Code	Description	Maximum Reimbursement
D7660	Malar and/or zygomatic arch—closed reduction	3277
D7670	Alveolus closed reduction may include stabilization of teeth	1746
D7671	Alveolus open reduction may include stabilization of teeth	1298
D7680	Facial bones—complicated reduction with fixation and multiple surgical approaches	6555
D7710	Maxilla open reduction	4568
D7720	Maxillia—closed reduction	3462
D7730	Mandible—open reduction	4826
D7740	Mandible—closed reduction	3636
D7750	Malar and/or zygomatic arch—open reduction	4230
D7760	Malar and/or zygomatic arch—closed reduction	6044
D7770	Alveolus open reduction stabilization of teeth	2794
D7771	Alveolus closed reduction stabilization of teeth	1958
D7780	Facial bones—complicated reduction with fixation and multiple surgical approaches	8587
D7810	Open reduction of dislocation	4271
D7820	Closed reduction of dislocation	644
D7830	Manipulation under anesthesia	990
D7840	Condylectomy	5466
D7850	Surgical discectomy, with/without implant	5356
D7852	Disc repair	5541
D7854	Synovectomy	5278
D7856	Myotomy	3505
D7858	Joint reconstruction	IR
D7860	Arthrotomy	IR
D7865	Arthroplasty	IR
D7870	Arthrocentesis	562
D7871	Non-arthroscopic lysis and lavage	IR
D7872	Arthroscopy—diagnosis, with or without biopsy	IR
D7873	Arthroscopy—surgical: lavage and lysis of adhesions	IR
D7874	Arthroscopy—surgical: disc repositioning and stabilization	IR
D7875	Arthroscopy—surgical: synovectomy	IR
D7876	Arthroscopy—surgical: discectomy	IR
D7877	Arthroscopy—surgical: debridement	IR
D7880	Occlusal orthotic device, by report	990
D7899	Unspecified TMD therapy, by report	IR
D7910	Suture of recent small wounds up to 5 cm	300
D7911	Complicated suture—up to 5 cm	486
D7912	Complicated suture—greater than 5 cm	792
D7920	Skin graft (identify defect covered, location and type of graft)	2677
D7940	Osteoplasty—for orthognathic deformaties	4123
D7941	Osteotomy—mandibular rami	9139
D7943	Osteotomy—mandibular rami with bone graft; includes obtaining the graft	8623
D9744	Osteotomy—segmented or subapical	7006
D7945	Osteotomy—body of mandible	6983
D7946	LeFort I (maxillia—total)	8251
D7947	LeFort I (maxillia—segmented)	8393
D7948	LeFort II or LeFort III (osteoplasty of facial bones for midface hypoplasia or retrusion)-without bone graft	9586
D7949	LeFort II of LeFort III—with bone graft	11832
D7950	Osseous, osteoperiosteal or cartilage graft of the mandible or maxillia—autogenous or nonautogenous, by report	3116
D7951	Sinus augmentation with bone or bone substitutes	3200
D7953	Bone replacement graft for ridge preservation—per site	800

CDT Code	Description	Maximum Reimbursement
D7955	Repair of maxillofacial soft and/or hard tissue defect	3807
D7960	Frenulectomy—also known as frenectomy or frenotomy—separate procedure not incidental to another procedure	450
D7936	Frenuloplasty	499
D7970	Excision of hyperplastic tissue—per arch	517
D7971	Excision of pericoronal gingiva	258
D7972	Surgical reduction of fibrous tuberosity	796
D7980	Sialolithotomy	843
D7981	Excision of salivary gland, by report	IR
D7982	Sialodochoplasty	1749
D7983	Closure of salivary fistula	1528
D7990	Emergency tracheotomy	1482
D7991	Coronoidectomy	4056
D7995	Synthetic graft—mandible or facial bones, by report	IR
D7996	Implant-mandible for augmentation purposes (excluding alveolar ridge), by report	IR
D7997	Appliance removal (not by dentist who place appliance), includes removal of archbar	350
D7998	Intraoral placement of a fixation device not in conjunction with a fracture	2572
D7999	Unspecified oral surgery procedure, by report	IR
D8010	Limited orthodontic treatment of the primary dentition	2149
D8020	Limited orthodontic treatment of the transitional dentition	2459
D8030	Limited orthodontic treatment of the adolescent dentition	2901
D8040	Limited orthodontic treatment of the adult dentition	3237
D8050	Interceptive orthodontic treatment of the primary dentition	2590
D8060	Interceptive orthodontic treatment of the transitional dentition	2796
D8070	Comprehensive orthodontic treatment of the transitional dentition	5200
D8080	Comprehensive orthodontic treatment of the adolescent dentition	5250
D8090	Comprehensive orthodontic treatment of the adult dentition	5308
D8210	Removable appliance therapy	861
D8220	Fixed appliance therapy	968
D8660	Pre-orthodontic treatment visit	384
D8670	Periodic orthodontic treatment visit (as part of contract)	263
D8680	Orthodontic retention (removal of appliances, construction and placement of retainers(s))	532
D8690	Orthodontic treatment (alternative billing to a contract fee)	283
D8691	Repair of orthodontic appliance	210
D8692	Replacement of lost or broken retainer	330
D8693	Rebonding or recementing; and/or repair as require, of fixed retainers	356
D8999	Unspecified orthodontic procedure, by report	IR
D9110	Palliative (emergency) treatment of dental pain—minor procedure	126
D9120	Fixed partial denture sectioning	250
D9210	Local anesthesia not in conjunction with operative or surgical procedures	74
D9211	Regional block anesthesia	96
D9212	Trigeminal division block anesthesia	272
D9215	Local anesthesia in conjunction with operative or surgical procedures	65
D9220	Deep sedation/general anesthesia—first 30 minutes	392

CDT Code	Description	Maximum Reimbursement
D9221	Deep sedation/general anesthesia—each additional 15 minutes	174
D9230	Inhalation of nitrous oxide / anxiolysis analgesia	79
D9241	Intravenous conscious sedation/analgesia—first 30 minutes	416
D9242	Intravenous conscious sedation/analgesia—each additional 15 minutes	169
D9248	Non-intravenous conscious sedation	325
D9310	Consultation—diagnostic services provided by dentist or physician other than requesting dentist or physician	129
D9410	House/extended care facility call	246
D9420	Hospital or ambulatory surgery center call	299
D9430	Office visit for observation (during regularly scheduled hours)—no other services performed	76
D9440	Office visit after regularly scheduled hours	179
D9450	Case presentation, detailed and extensive treatment planning	145
D9610	Therapeutic parental drug, single administration	111
D9612	Therapeutic parental drug, two or more administrations, different medications	193
D9630	Other drugs and/or medications, by report	49
D9910	Application of desensitizing medicament	63
D9911	Application of desensitizing resin for cervical and/or root surface, per tooth	79
D9920	Behavior management, by report	160
D9930	Treatment of complications (post-surgical)—unusual circumstances, by report	132
D9940	Occlusal guard, by report	600
D9941	Fabrication of athletic mouthguard	254
D9942	Repair and/or reline of occlusal guard	250
D9950	Occlusion analysis—mounted case	344
D9951	Occlusal adjustment—limited	182
D9952	Occlusal adjustment—complete	687
D9970	Enamel microabrasion	202
D9971	Odontoplasty 1-2 teeth; includes removal of enamel projections	176
D9972	External bleaching—per arch	328
D9973	External bleaching—per tooth	231
D9974	Internal bleaching—per tooth	291
D9999	Unspecified adjunctive procedure, by report	IR

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:1167 (September 1993), amended LR 20:1298 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:2043 (July 2013), LR 39:

Family Impact Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. This proposed Rule shall not have any impact on the six criteria set out in R.S. 49:972(D).

Poverty Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on poverty as defined by R.S. 49:973.

Small Business Statement

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The

agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Inquiries concerning the proposed amendments may be directed to: Director, Office of Workers' Compensation Administration, Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040. Interested parties may submit data, views, arguments, information or comments on the proposed amendment in writing to the Louisiana Workforce Commission, Office of Workers' Compensation, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040., Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the Department within 20 days from the publication 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 Department within 20 days of the publication of this notice.

Public Hearing

A public hearing will be held on Monday, November 25, 2013, at 9:30 AM at the Louisiana Workforce Commission Training Center, 2155 Fuqua St., Baton Rouge, LA 70802.

Curt Eysink
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Fee Schedule Update**

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

In July of 2013, in accordance with LSA - R.S. 23:1034.2 and 1291, the Office of Workers' Compensation (OWC), Louisiana Workforce Commission (LWC) updated the Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes in order to be consistent with the American Medical Association (AMA). In doing so, numerous codes were added and deleted. However, the rules associated with the Current Dental Terminology (CDT) and Physical Medicine (which references physical and occupational therapist codes) were omitted in the updates. The proposed rule will replace the obsolete rules and guidelines associated with the CDT and Physical Medicine codes. Also, in order to be consistent with the AMA, the proposed rule will delete duplicate codes, fix codes with incorrect pricing and add inadvertently omitted codes.

The proposed rule change will have no impact on state or local government expenditures. All implementation costs associated with the proposed rule change have been factored into the department's operating budget.

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

There is no anticipated revenue impact on state or local government units.

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

The LWC anticipates that implementation of the proposed omitted codes, prices, and rules will provide for a more accurate account of what services were provided and allow billings according to a more precise medical determination. The department cannot determine whether workers' compensation costs will be higher or lower due to the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct effect on competition and employment.

Wes Hathaway
Director
1310#047

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Workforce Commission Office of Workers' Compensation

Notice of Payment, Modification, Suspension,
Termination or Controversion of Compensation
or Medical Benefits (LAC 40:I.6631)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Provisions Act, proposes to amend LAC 40:I.6631. The proposed amendments alter the existing form LWC-WC-1002, which is the form by which payors currently report a Notice of Payment to the injured worker and the Office of Workers' Compensation Administration ("OWCA"). The amendments to the current LWC-WC-1002 are made in accordance with La. R.S. 23:1201.1 (Act 337 of the 2013 Legislative Session). The new LWC-WC-1002 is more expansive and payors will use the form to report any initial payment, modification, suspension, termination or controversion of compensation or medical benefits to the injured worker and the OWCA.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 3. Hearing Rules

Chapter 66. Miscellaneous

Subchapter E. Forms

§6631. Notice of Payment, Modification, Suspension, Termination or Controversion of Compensation or Medical Benefits

EMPLOYER/PAYOR MAIL TO:
OFFICE OF WORKERS' COMPENSATION
POST OFFICE BOX 94040
BATON ROUGE, LA 70804-9040

1. Employee Social Security No. _____ - _____ - _____
2. Payor Claim No.: _____
3. Date of Injury/Illness _____
4. Date of Notice: _____

**NOTICE OF PAYMENT, MODIFICATION, SUSPENSION, TERMINATION OR CONTROVERSION
OF COMPENSATION OR MEDICAL BENEFITS**

5. Purpose of Form (check one):
Initial Payment ___ Modification ___ Suspension ___ Termination ___ Controversion ___

6. (a) Employee Name: _____
Address: _____
Telephone: _____

(b) Employee Representative Name (if known) _____
Address: _____

Telephone: _____
Facsimile: _____

(c) Employer Name: _____
Address: _____

Telephone: _____
Facsimile: _____

7. Effective Date of Initial Payment, Modification, Suspension, Termination or Controversion: ____/____/20____

8. Description of Injury/Occupational Disease: _____

9. Average Weekly Wage: \$ _____

10. Payment/Modification (check one): Initial Payment ___ Modification ___

Indemnity Benefits are to be paid as follows:

A. Permanent Total Disability (PTD) ___ Temporary Total Disability (TTD) ___ (check one) benefits at the rate of \$ _____ per week;

B. Supplemental Earnings Benefits (SEB) paid at the rate of \$ _____ per _____ based on a wage earning capacity of \$ _____; OR

SEB paid at the rate of \$ _____ per _____ dependent on wages as reflected in LWC-WC-1020's to be submitted by employee each month;

C. Reduced PTD ___ TTD ___ SEB ___ (check one) at the rate of \$ _____ due to employee's receipt of (check applicable item):

____ Social Security Benefits at the rate of \$ _____ per _____;

____ Other Workers' Compensation Benefits at the rate of \$ _____ per _____;

____ Employer Funded Disability Benefits at the rate of \$ _____ per _____;

____ Unemployment Insurance Benefits

____ Third Party Recovery in the amount of \$ _____

____ 50% reduction of compensation based on Employee's refusal to cooperate with Vocational Rehabilitation

____ Reduction due to child support order

____ Other (Describe): _____

D. Permanent Partial Disability (PPD) Benefits of \$ _____ per week payable for _____ weeks.

E. Death Benefits have begun in the amount of \$ _____ per week, representing _____% of AWW.

Employee Name _____
Date of injury/illness _____

11. Suspension/Termination

Indemnity and/or Medical Benefits have been suspended/terminated due to:

____ Employee's refusal to submit to a medical examination;

____ Employee's refusal to execute a Choice of Physician form;

____ Fraud

____ Dispute over Compensability (Describe): _____

____ Employee's refusal to return the form LWC-WC-1025 or LWC-WC-1020;

____ Released to return to work full duty;

____ Employee able to earn 90% of pre-accident average weekly wage; or

____ Other (Describe): _____

12. Controversion

Employee's rights to Indemnity and/or Medical Benefits are disputed and have been denied because Employer/Payor disputes:

____ Compensable Work Accident;

____ Compensable Injury;

____ Employment Relationship;

____ Causation;

____ Disability;

____ Fraud;

____ Jurisdiction; or

____ Other (Describe): _____

13. Notice Submitted By:

Signature of Preparer: _____

Printed name: _____

Position/Affiliation: _____

Telephone: _____

Facsimile: _____

Address: _____

14. Please provide the following information:

Payor/Self Insured Employer Name: _____

Telephone: _____

Facsimile: _____

Address: _____

NOTICE OF DISAGREEMENT

(to be completed by Employee/Employee Representative)

MAIL TO: Employee Social Security No.: _____ - _____ - _____

The preparer for Employer/Payor
at the address listed in Section 13
of the LWC-WC-1002.

Date of Notice of Disagreement:

Payor Claim No. (if known): _____

Date of Injury/Illness: _____

BASIS OF DISAGREEMENT

1. Average Weekly Wage is incorrect. The correct AWW amount is \$ _____.

2. The type of workers' compensation indemnity benefits is incorrect. The correct type is PTD/TTD/SEB/PPD (circle one).

3. The amount/rate of workers' compensation indemnity benefits is incorrect. The correct amount is \$ _____ per _____.

4. The basis for Employer/Payor's suspension/termination/controversion of benefits is incorrect because (describe):

5. Other (describe): _____

6. Notice Submitted By:

Employee Name: _____
Telephone _____
Address: _____

Employee Representative _____
La. Bar Roll No. _____
Address: _____

Telephone: _____
Facsimile: _____

Signature _____
Printed name: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:286 (February 1999), amended by the Workforce Commission, Office of Workers Compensation, LR 40:

Family Impact Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. This proposed Rule shall not have any impact on the six criteria set out in R.S. 49:972(D).

Poverty Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on poverty as defined by R.S. 49:973.

Small Business Statement

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Inquiries concerning the proposed amendments may be directed to: Director, Office of Workers' Compensation Administration, Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, LA 70804-9040. Interested parties may submit data, views, arguments, information or comments on the proposed amendment in writing to the Louisiana Workforce Commission, Office of Workers' Compensation, P.O. Box 94040, Baton Rouge, LA 70804-9040, Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the department within 20 days from the publication 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 department within 20 days of the publication of this notice.

Public Hearing

A public hearing will be held on Monday, November 25, 2013, at 10 a.m. at the Louisiana Workforce Commission Training Center, 2155 Fuqua St., Baton Rouge, LA 70802.

Curt Eysink
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Notice of Payment, Modification, Suspension, Termination or Controversion of Compensation or Medical Benefits

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

The proposed amendments alter the existing form LWC-WC-1002, which is the form that Payors (employers or entities responsible for payment of benefits by a claimant as a result of a work related injury) currently report a Notice of Payment, Modification or Suspension to the injured worker and the Office of Workers' Compensation Administration (OWCA). The amendments to the existing LWC-WC-1002 are made in accordance with La. R.S. 23:1201.1 (Act 337 of the 2013 Regular Legislative Session). The new LWC-WC-1002 is more expansive so Payors will use the form to report any initial payment, modification, suspension, termination or controversion of compensation or medical benefits to the injured worker and the OWCA.

The OWCA will not experience any additional expense due to the alteration of the form, including the capturing of expanded information, nor will it experience material savings from the use of the new form. The proposed form LWC-WC-1002 will be made available online, therefore no re-printing of the forms will be necessary.

The Division of Administration indicates that the proposed rule will have no fiscal impact on the Office of Risk Management.

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

The implementation of the new form LWC-WC-1002 will have no anticipated effect on revenue collections of state or local governmental units.

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

The proposed amendments update the existing LWC-WC-1002 form and no additional costs are anticipated. The Payor will be required to use the new LWC-WC-1002 form when there is any initial payment, modification, suspension, termination or controversion of compensation or medical

benefits. The new form will require more detailed information than is required by the existing form. As a result, the new form may be more time consuming for Payors to complete.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct effect on competition and employment.

Wes Hathaway
Director
1310#046

Gregg V. Albrecht
Chief Economist
Legislative Fiscal Office

Administrative Code Updates

CUMULATIVE: January - September 2013

LAC Title	Part #.Section #	Action	Location:		LAC Title	Part #.Section #	Action	Location:	
			Month	LR 39 Page #				Month	LR 39 Page #
7	XIII.101,121,141,171,183,193	Amended	July	1757	28	LXXVII.341,343,345,347,349,351,353,355	Repealed	Sept.	2437
	XIII.239,241	Adopted	July	1757		LXXVII.357,359,361,363,356,367,369,371	Repealed	Sept.	2437
	XXV.101,103,111,113,117,121,123,141	Amended	Feb.	300		LXXVII.373,375,377,379,381,383,385,387	Repealed	Sept.	2437
	XXV.141	Amended	June	1413		LXXVII.389,391,393,395,397,501,503,505	Repealed	Sept.	2437
	XXV.145,151,153,157	Amended	Feb.	300		LXXVII.507,511,513,515,701,901,903	Repealed	Sept.	2437
	XXV.155,159,165,167	Adopted	Feb.	300		LXXIX.105,107,115,117,119,123,301,303	Amended	June	1438
13	I.4701,4703,4705,4707,4709	Adopted	June	1419	LXXIX.107	Amended	Feb.	306	
22	I.313	Amended	Aug.	2281	LXXIX.109,110,111,113	Repealed	Feb.	306	
25	III.8101,8103,8301,8303,8501,8701,8703	Adopted	Apr.	1041	LXXIX.305,703,705,1705,2105,2113,2117	Repealed	June	1438	
	V.101,105	Amended	Aug.	2252	LXXIX.501,505,509,511,515,517,525,527	Amended	June	1438	
	V.103,107,109,111,113,115,117	Repealed	Aug.	2252	LXXIX.529,531,533,535,707,901,1101	Amended	June	1438	
	V.119,121,123,125,201,203,205,209,211,213	Adopted	Aug.	2252	LXXIX.1103	Adopted	Mar.	480	
	XI.101,103,109,111,113,115,117,121,501,503	Amended	Aug.	2258	LXXIX.1901,1903,2103,2109,2111,2120	Amended	June	1438	
	XI.102,103,108,122,510,514	Adopted	Aug.	2252	LXXIX.2102,2508	Adopted	June	1438	
	XI.105,107,119,509,908,910,911	Repealed	Aug.	2258	LXXIX.2119,2125,2129,2133,2703,2705	Repealed	June	1438	
	XI.301,303,305,307,309,901,903,904,1101	Amended	Aug.	2269	LXXIX.2127,2131,2135,2307,2313,2319	Amended	June	1438	
	XI.311,905,907,908,909,910,1111	Repealed	Aug.	2269	LXXIX.2323,2325,2327,2329,2331,2339	Amended	June	1438	
	XI.505,507,511,513,701,703,705,707,709	Amended	Aug.	2258	LXXIX.2501,2503,2505,2507,2509,2511	Amended	June	1438	
	XI.711,901,903,904,907,909,1501,1503	Amended	Aug.	2258	LXXIX.2513,2515,2517,2519,2521,2701	Amended	June	1438	
	XI.1103,1105,1107,1109,1113,1115,1117	Amended	Aug.	2269	LXXIX.2707,2709,2711,2713,2715,2719	Repealed	June	1438	
	XI.1301,1701,1703,1705	Amended	Aug.	2269	LXXIX.2717,2735,2901,2903,3003,3301	Amended	June	1438	
	XIII.503	Amended	Apr.	1042	LXXIX.2721,2723,2725,2727,2729,2731	Repealed	June	1438	
	28	VII.103,107,301,305,501,2303,3101,3103	Amended	Jan.	67	LXXIX.2733,2905,2907,2909,2911,2913	Repealed	June	1438
		VII.105,303,503,1307,1309,2705,4317,5307	Repealed	Jan.	67	LXXIX.3101	Repealed	June	1438
		VII.3109,4103,4105,4301,4303,4305,4307	Amended	Jan.	67	LXXIX.3303	Amended	June	1438
		VII.4309,4311,4501,4503,4507,5101,5103	Amended	Jan.	67	LXXXIII.301,409,517,613	Amended	Feb.	304
VII.5105,5107,5109,5111,5303,5305,5307		Amended	Jan.	67	LXXXIII.301,409,521	Amended	June	1421	
VII.5113,5115		Adopted	Jan.	67	LXXXIII.301,413,515,613,1301	Amended	Sept.	2441	
VII.5311,5313,5315,5317		Repealed	Jan.	67	LXXXIII.303	Adopted	Sept.	2441	
IX.305,307,313,314,315,317,319,321,331		Amended	May	1264	LXXXIII.612	Adopted	Feb.	304	
IX.500,501,502,504,505,901,921,929,1101		Amended	May	1264	LXXXIII.1102	Amended	Feb.	304	
IX.1103,1105,1107,1109,1111,1113,1115		Amended	May	1264	LXXXIII.3501,3505	Adopted	Mar.	472	
IX.1117,1119,1121,1123,1125,1127,1129		Amended	May	1264	LXXXIII.3503,3507	Amended	Mar.	472	
IX.1131		Amended	May	1264	CXI.305,701,1817	Amended	Apr.	1018	
XI.501,503,505,507,509,511,513,515,517		Repealed	May	1264	CXI.319,1809,1810,2201,2203,2205,2207	Adopted	Jan.	73	
XI.519,521,523,525,527,529,531		Repealed	May	1264	CXI.701,1701,1813,1817,1825	Amended	Jan.	73	
28		I.501	Repromulgated	Feb.	307	CXI.1127,1129,1711,1713,1715,1717,3501	Amended	June	1422
		IV.301	Amended	Feb.	308	CXI.1804,1805,1806,1807,1808	Repromulgated	Jan.	73
		IV.703	Amended	Mar.	481	CXI.1813	Amended	Sept.	2444
		IV.703	Amended	Sept.	2485	CXI.2400,2409,2411,2412,2413,2415	Adopted	Jan.	73
	IV.1201,1203,1205,1207,1209,1213,1215	Amended	Aug.	2234	CXIII.303,307,309,1905,3101	Amended	Jan.	80	
	IV.1211	Repealed	Aug.	2234	CXIII.1907	Adopted	Jan.	80	
	IV.1217	Amended	Aug.	2234	CXV.101,303,307,313,323,325,329,331,333	Amended	Aug.	2195	
	VI.311,315	Amended	Aug.	2238	CXV.311,315,319,321,335,507,509,511,513	Repealed	Aug.	2195	
	IX.103,105	Amended	Jan.	84	CXV.337,341,343,345,349,501,503,505,515	Amended	Aug.	2195	
	XXI.101,103,301,303,501,503,505,507,509	Repealed	Sept.	2484	CXV.521,703,705,707,709,713,715,717,719	Amended	Aug.	2195	
	XXI.511,513,515,517,519,521,523,525,527	Repealed	Sept.	2484	CXV.711,907,909,1119,1121,1129,1131,1137	Repealed	Aug.	2195	
	XXXI.101,301,303,305,307,501,503,505,507,509	Repealed	Sept.	2481	CXV.901,903,913,915,1103,1105,1107,1109	Amended	Aug.	2195	
	XXXI.509,511,513,515,517,519,521,523,525	Repealed	Sept.	2481	CXV.1111,1115,1117,1123,1124,2345,2347	Amended	Aug.	2195	
	XXXI.527,529,701,703,705,901,903,905,907	Repealed	Sept.	2481	CXV.1145,1147,1901,1903,2321,2323,2393	Repealed	Aug.	2195	
	XXXI.909,911,1301,1303,1305,1307,1309	Repealed	Sept.	2481	CXV.1301	Amended	Mar.	476	
	XXXI.1311,1501,1503,1505,1507,1509	Repealed	Sept.	2481	CXV.1302,1303	Adopted	Mar.	476	
	XXXI.1511	Repealed	Sept.	2481	CXV.1304,1305,1306	Repromulgated	Mar.	476	
	LXXVII.101,103,105,107,301,303,305,307	Repealed	Sept.	2437	CXV.2314,2911	Adopted	Aug.	2195	
LXXVII.309,311,313,315,317,319,321,323	Repealed	Sept.	2437	CXV.2317	Amended	Apr.	1038		
LXXVII.325,327,329,331,333,335,337,339	Repealed	Sept.	2437	CXV.2339,2382	Repromulgated	Aug.	2195		

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	CXXXI.233,235,237,240,243,348,405,409	Amended	June	1459	46	I.1303	Amended	Mar.	483
	CXXXI.605,607,609,629,630,631,633,648	Amended	June	1459		I.1905,1907	Adopted	Mar.	483
	CXXXI.659,703,705,707,721,723	Amended	June	1459		V.309,1507,1509,1511,1703	Adopted	Mar.	498
	CXXXV.101,103,105,107,109,111,113	Repealed	July	1765		V.1501,1503,1505,1701,1705	Amended	Mar.	498
	CXXXV.115,117,119,121,123,125,127	Repealed	July	1765		XXI.603,607	Amended	Apr.	1040
	CXXXIX.301	Amended	Mar.	473		XXXIII.103	Repromulgated	Jan.	86
	CXXXIX.401,403,405,407,409,411,417,419	Adopted	Mar.	473		XXXIII.116,911,1403	Amended	Aug.	2277
	CXXXIX.421,423,521,707	Adopted	Mar.	473		XXXIII.120	Amended	Aug.	2277
	CXXXIX.503,505,507,509,511,513,515,517	Amended	June	1431		XXXIII.305	Repealed	May	1282
	CXXXIX.512	Amended	Jan.	81		XXXIII.306,307,706,707	Amended	Jan.	87
	CXXXIX.518,901,1101,1303,1503,2501	Amended	June	1431		XXXIII.318	Repealed	Aug.	2279
	CXXXIX.523,1105	Adopted	June	1431		XXXIII.415,419	Amended	Aug.	2278
	CXXXIX.2709	Amended	June	1431		XXXIII.415,1505,1506,1509,1511,1513	Amended	Jan.	89
	CXXXIX.2709,2711	Amended	Apr.	1021		XXXIII.1605	Amended	Aug.	2277
	CXLV.505	Amended	Jan.	82		XXXIII.1611,1709	Amended	May	1282
	CXLV.505	Amended	Apr.	1021		XXXIII.1613,1709,1809	Amended	Jan.	86
	CXLVII.105,301,303,305,325,701,905	Amended	May	1272		XXXIII.1619	Repealed	Aug.	2277
	CXLVII.327	Repealed	May	1272		XLIV.301,901,1101,1201,1301,1501,1701	Amended	July	1767
	CLIII.1301,1303,1305	Adopted	Jan.	82		XLIV.501,701,1901,2301,3501,3901,4301	Repealed	July	1767
	CLV.101,103,301,303,307,309,311,313,501	Adopted	Apr.	1023		XLIV.1401,1403,1405,1407,1409,1411,1413	Adopted	July	1767
	CLV.503,505,701,703,705,707,901,1101	Adopted	Apr.	1023		XLIV.1415	Adopted	July	1767
	CLV.1103,1105,1107,1109,1111,1301,1303	Adopted	Apr.	1023		XLIV.2501,2701,2901,3101,3301,3701,3703	Amended	July	1767
	CLVII.101,301,303,305,307,309,311,313	Adopted	Apr.	1029		XLIV.4101,5301,5501,5503,5901,6101	Amended	July	1767
	CLVII.305,307	Amended	Aug.	2193		XLIV.4501,4701,4901,5101,5701,6301	Repealed	July	1767
	CLIX.101,103,105,107,109,111,113,201,301	Adopted	Sept.	2445		XLV.6506	Amended	Apr.	1047
	CLIX.303,305,307,401,403,405,407,409,411	Adopted	Sept.	2445		XLVII.3328	Amended	Aug.	2280
	CLIX.501,503,505,507,701,703,705,707,709	Adopted	Sept.	2445		XLVII.3707	Amended	Mar.	501
	CLIX.711,901,1101,1103	Adopted	Sept.	2445		XLIX.303,503,505,511,701,709,713,903,905	Amended	Apr.	1044
31	I.1101,1103,1105,1107	Adopted	Apr.	1055		XLIX.1101,1105,1107,1201,1301	Amended	Apr.	1044
33	III.319	Amended	Apr.	1039		LIII.901,903,905,909	Amended	July	1777
	III.506,507,2160,3003,5116,5122,5311,5901	Amended	May	1276		LIII.1103	Amended	Feb.	315
	III.509	Amended	May	1279		LIII.1139,1143	Amended	Feb.	313
	III.905	Amended	May	1278		LIII.1503	Amended	May	1282
	III.2121,2122,2199	Amended	Aug.	2238		LIII.1525	Adopted	May	1282
33	III.2801,2803,2807,2811,2813,2817,2819	Amended	June	1466		LIII.1705	Amended	Feb.	313
	III.2815	Adopted	June	1466		LIII.1713,2743	Amended	Feb.	312
	III.2821	Amended	June	1466		LIII.1727	Repealed	Feb.	313
	III.3003	Amended	Apr.	1038		LIII.2401,2403,2405,2407	Adopted	Mar.	501
	V.2267,2299,3105,4901	Amended	Sept.	2491		LIII.2705	Amended	Feb.	312
	V.2299	Amended	Sept.	2486		LIII.2901,2909,2911,2913,2917,2921,2925	Amended	Feb.	314
	VI.803	Repromulgated	Jan.	85		LIII.2931	Repealed	Feb.	314
	XI.905	Repromulgated	Jan.	85		LX.103,301,307,501,503,701,703,705,801	Amended	July	1782
34	I.5515	Adopted	May	1280		LX.505,1101,1103,1505,3703	Adopted	July	1782
	I.5517	Adopted	Feb.	309		LX.803,901,903,1101,1303,1305,1309,1311	Amended	July	1782
	I.5519	Adopted	Feb.	309	46	LX.1321,1323,1703,2101,2103,2105,2107	Amended	July	1782
	III.131	Amended	Jan.	85		LX.2109,2113,2115,2117,2118,3313,3315	Amended	July	1782
	III.131	Amended	Sept.	2493		LX.3701	Amended	July	1782
35	I.1505	Amended	May	1281		LXI.903,1901,2909	Amended	Apr.	1060
	IX.9105	Adopted	May	1281		LXI.1301,1303,1313,1315,1701	Amended	Aug.	2282
	XIII.11003	Adopted	Sept.	2491		LXI.1307	Repealed	Aug.	2282
37	XIII.3501,3503,3507,3509,3511,3513	Amended	July	1807		LXI.2701,3111,3113	Amended	June	1481
	XIII.3510	Adopted	July	1807		LXIII.601,603	Amended	Feb.	311
	XIII.3515,3517,3519,3521,3523,3525	Amended	July	1807		LXVII.10309	Amended	Feb.	310
40	I.305	Amended	Feb.	331		LXVII.10701	Adopted	Feb.	310
	I.306	Adopted	Feb.	331		LXXV.107,109,121,123,125,701	Amended	Apr.	1042
	I.3119,3329,3911,4119,4339,4537,5157,5399	Amended	July	1838	48	LXXV.130	Adopted	Apr.	1042
	IV.109,113	Amended	Aug.	2312		LXXX.707	Amended	Aug.	2275
	IV.301,323,353,357,369,371	Amended	Aug.	2313		XCI.313	Amended	Jan.	91
	IV.307,325,329,331,337,343,359	Amended	July	1834		XCI.1101	Adopted	Jan.	91
	IV.309,333	Repealed	July	1834		I.4403,4409,4415	Amended	Aug.	2280
	IV.324,368	Adopted	Aug.	2313	50	I.9003,9009,9077,9093,9097	Amended	Sept.	2510
42	XI.2415	Amended	Feb.	329		I.12533	Amended	June	1469
43	I.700,724	Amended	June	1474		I.12535	Adopted	June	1469
	I.723,727	Amended	Feb.	327		I.1501,1503	Adopted	Apr.	1051
	I.728	Adopted	Feb.	327		I.3503,3505,3507,3509	Amended	Jan.	92
	XIX.103	Amended	Mar.	515		I.3507	Repromulgated	Feb.	318
	XIX.118	Amended	July	1824		I.8341,8345,8347,8349	Amended	Mar.	509
						I.12501	Amended	Mar.	505
						II.105,113	Amended	Apr.	1052
						II.10154,10156	Amended	June	1471
						II.20005	Amended	May	1286
						III.20509	Adopted	May	1285

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	V.915,959	Amended	Jan.	94		I.1012,1013,1014,1017,1018,1101,1102	Amended	June	1415
	V.959	Amended	Feb.	323		I.1016,1103,1104	Repealed	June	1415
	V.963	Repromulgated	Jan.	95					
	V.963	Amended	June	1470	55	III.110	Adopted	Mar.	516
	V.1301,1303,1305,1307,1309	Adopted	Feb.	323		III.117	Amended	Sept.	2511
	V.2709	Amended	Mar.	505		III.155	Repromulgated	Jan.	98
	V.5109	Adopted	Feb.	327		III.325	Amended	Sept.	2512
	V.5315,5515,5717,5915,6117	Amended	June	1472		V.103,303	Amended	June	1478
	V.6301,6303,6305,6311	Adopted	Sept.	2505		VI.301	Amended	July	1825
	VII.32903	Amended	July	1780		VI.301	Amended	Sept.	2512
	VII.32965,32967,32969	Adopted	Feb.	325		VII.503,505,507,509,511	Amended	July	1826
	IX.701,703,705,15103	Adopted	Sept.	2509					
	IX.8305	Amended	Jan.	96	56	III.2301,2303,2305,2307	Adopted	Jan.	117
	IX.8505	Adopted	Jan.	96		V.1107	Amended	Mar.	486
	IX.8701	Repealed	Jan.	96					
	IX.15133,15135	Amended	July	1781	58	I.115,117	Adopted	Jan.	120
	IX.15143	Amended	Jan.	96		I.401,405,407	Amended	Jan.	119
	IX.15143	Amended	July	1781		IX.201,202,203,204,205	Adopted	May	1286
	XI.3501	Amended	Jan.	93		XVII.201,202,203,204,205	Adopted	Aug.	2283
	XI.3501	Amended	Mar.	506		XVIII.101,102,103,104	Adopted	June	1482
	XI.6901,6903	Amended	May	1283		XIX.101,103,105,301,501,503,701,703,705	Adopted	Aug.	2187
	XI.7503	Amended	Feb.	316					
	XIII.121	Adopted	Mar.	509	61	I.1516	Adopted	Jan.	103
	XIII.701	Amended	Apr.	1050		I.1520	Amended	Jan.	103
	XIII.10301	Amended	Apr.	1050		I.1520	Repromulgated	Feb.	329
	XV.6501	Adopted	Feb.	318		I.1661,1663,1665,1667,1669,1673	Amended	Apr.	1006
	XV.6701,6703,6705	Repealed	Feb.	318		I.1668	Adopted	Apr.	1009
	XV.6905	Amended	Apr.	1048		I.1692,1693,1695,1697	Amended	Apr.	1015
	XV.9113	Amended	Mar.	505		I.1694	Adopted	Apr.	1015
	XV.9701,9703	Adopted	Jan.	93	61	I.1907	Amended	Jan.	99
	XV.10701	Amended	Jan.	97		III.2305	Amended	Sept.	2437
	XV.12901,12902,12903,12905,12907,12909	Amended	Sept.	2506		III.2501	Amended	Jan.	102
	XV.12910,12911,12912,12913,12915	Amended	Sept.	2506		III.2503	Amended	Jan.	99
	XV.12917	Amended	July	1780		V.101,303,304,703,907,1103,1307,1503,2503	Amended	Mar.	487
	XV.12919	Adopted	Apr.	1052					
	XV.28101	Amended	May	1286	67	III.1249,5563	Amended	June	1413
	XIX.309	Amended	Apr.	1052		III.1290,1291	Repealed	June	1413
	XIX.4329	Amended	Jan.	95		III.1503,2005,5106,5383	Amended	Aug.	2192
	XIX.4329,4334,4335,4337	Amended	May	1284		III.2509	Amended	July	1765
	XXI.701	Adopted	Mar.	509		III.2545	Amended	July	1764
	XXI.2101,2103,2105,2107,2301,2501,2503	Amended	Sept.	2494		III.5597	Adopted	Jan.	67
	XXI.2305	Adopted	Sept.	2494		III.5597	Amended	Aug.	2191
	XXI.2701,2703,2901	Amended	Sept.	2494		III.7302,7355	Amended	Jan.	66
	XXI.2915	Amended	Mar.	507		III.7304,7325,7357,7373	Amended	Mar.	470
	XXI.6101	Amended	Apr.	1049		V.6704	Adopted	Jan.	66
	XXI.8105,8301,8305,8307,8311,8313,8315	Amended	Feb.	319		V.6953,7103,7303	Amended	Jan.	66
	XXI.8105,8301,8307,8501,9501	Amended	July	1778		V.7503	Repromulgated	May	1264
	XXI.8302	Adopted	Feb.	319	70	V.7503,7505,7507,7509,7511	Amended	Apr.	1006
	XXI.8321,8323,8501,8701,8901,8903,9301	Amended	Feb.	319		I.701,703,705,707,709,710,711,713	Repealed	Jan.	117
	XXI.8325,8327	Adopted	July	1778		IX.301,313,315	Amended	Jan.	104
	XXI.9303,9501,9503	Amended	Feb.	319		IX.303,305,307,309,311,317,319,321,323	Repromulgated	Jan.	104
	XXI.9501	Amended	Mar.	508		IX.325,327,329,331,333,335,337	Repromulgated	Jan.	104
	XXI.9501	Amended	Mar.	508		IX.901,903,905,907,909,911,913,915,917	Repealed	Jan.	104
	XXI.9501	Repromulgated	Apr.	1048		IX.919,921,923,925,927,929,931,933,935	Repealed	Jan.	104
	XXI.11101,11103,11301,11303,11501,11521	Amended	Sept.	2497		IX.937	Repealed	Jan.	104
	XXI.11104,11529,12103	Adopted	Sept.	2497		XXIX.101,103,105,107,109,111,113,115			
	XXI.11523,11527,11701,11703,11705,11901	Amended	Sept.	2497					
50	XXI.11903,11905,12101	Amended	Sept.	2497					
	XXI.11301	Amended	Mar.	507	73	I.303	Amended	Jan.	98
	XXI.14301	Amended	Apr.	1049					
	XXI.16901	Amended	Apr.	1049	76	I.701	Amended	Apr.	1062
	XXII.2701	Amended	Mar.	506		V.111	Amended	Aug.	2291
	XXIII.1301	Amended	Feb.	316		V.301	Amended	Jan.	120
	XXV.701	Amended	Feb.	316		V.701	Amended	Aug.	2291
	XXVII.325,353	Amended	May	1285		VII.149,165,189	Amended	July	1832
	XXXIII.501	Amended	Feb.	317		VII.187	Amended	July	1833
	XXXIII.2701	Amended	Feb.	317		VII.199	Amended	Jan.	120
51	XIV.411	Repromulgated	Mar.	511		VII.335	Amended	Feb.	330
						VII.357	Amended	Apr.	1062
52	I.703,704,802,803,1002,1003,1009,1010	Amended	June	1415		VII.535	Adopted	Mar.	516
	I.708,1001,1004,1005,1006,1007,1011,1015	Repealed	June	1415		XV.101	Amended	July	1834
	I.801,804,806,808	Adopted	June	1415		XIX.101,103	Amended	Aug.	2306
						XIX.111	Amended	Aug.	2292

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POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Division

Public Hearing—Substantive Changes to Proposed Rule AQ329 Asbestos-Containing Materials in Schools and State Buildings (LAC 33:III.2701, 2703, 2705, 2707, 2711, 2713, 2717, 2719, 2721, 2723, 2725, 2735, 2739, 2741 and 2799)(AQ329S)

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 the department is seeking to incorporate both technical and substantive changes to the proposed amendments to various regulations, LAC 33: III.2701, 2703, 2705, 2707, 2711, 2713, 2717, 2719, 2721, 2723, 2725, 2735, 2739, 2741 and 2799 (AQ329S), which were originally noticed as AQ329 in the April 20, 2013 issue of the *Louisiana Register*. (1310Pot1)

The department has made both technical and substantive changes to address comments received during the public comment period of proposed rule AQ329. The changes: provide for work performed in and on public and commercial buildings pursuant to the federal Asbestos Hazard Emergency Response Act (AHERA) and Asbestos School Hazard Abatement Reauthorization Act (ASHARA); make Chapter 27 and Section 5151 of Title 33, Part III of the *Louisiana Administrative Code*, both dealing with asbestos, more compatible; update references to standards provided by the federal Occupational Safety and Health Administration (OSHA) incorporated into the regulations; address training care providers and accredited personnel; and to provide greater clarity of the regulations. In the interest of clarity and transparency, the department is providing public notice and opportunity to comment on the proposed changes to the amendments of the regulations in question. The department is also providing an Interim Response to Comments received on the initial regulation proposal.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from language changed by this proposal and the Interim Response to Comments are available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

A public hearing on the substantive changes will be held on November 25, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address

given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation by AQ329S. Such comments must be received no later than November 25, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ329S. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These substantive changes are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

1310#042

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Division

Public Hearing—Substantive Changes to Proposed Rule AQ330 Emission Standard for Asbestos (Demo/Reno) (LAC 33:III.5151)(AQ330S)

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 the department is seeking to incorporate both technical and substantive changes to the proposed amendments to various regulations, LAC 33: III.5151 (AQ330S), which were originally noticed as AQ330 in the April 20, 2013 issue of the *Louisiana Register*. (1310Pot2)

The department has made both technical and substantive changes to address comments received during the public comment period of proposed rule AQ330.

The changes clarify the implementation of threshold levels and other determinations of applicability of the regulations to demolition and renovation activity; clarify requirements for the disposal of asbestos-containing material; make Chapter 27 and Section 5151 of Title 33, Part III of the *Louisiana Administrative Code*, both dealing with asbestos, more compatible; clarify notice requirements; clarify personnel training and accreditation requirements; update incorporation of sign requirements; and to provide greater clarity of the regulations.

In the interest of clarity and transparency, the department is providing public notice and opportunity to comment on the proposed changes to the amendments of the regulations in question. The department is also providing an Interim Response to Comments received on the initial regulation proposal.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from language changed by this proposal and the Interim Response to Comments are available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

A public hearing on the substantive changes will be held on November 25, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation by AQ330S. Such comments must be received no later than November 25, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ330S. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These substantive changes are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New

Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

1310#043

POTPOURRI

Department of Health and Hospitals Board of Nursing

Public Hearing—Substantive Changes to Proposed Rule
Advance Practice Registered Nurses
(LAC 46:XLVII.4503 and 4505)

The Louisiana state Board of Nursing (LSBN) intends to incorporate substantive changes to the proposed amendments to the regulations regarding LAC 46:XLVII.4503 and 4505. The Notice of Intent for Title 46, Professional and Occupational Standards, Part XLVII, Nurses: Practical Nurses and Registered Nurses, Subpart 2, Registered Nurses, Chapter 45, Advanced Practice Registered Nurses, was published in the April 20, 2013 issue of the *Louisiana Register*.

A public hearing was held pursuant to R.S. 49:953(A)(2) on May 29, 2013, and interested persons were invited to provide comment. After a thorough review and careful consideration of the received comments, the board proposed to amend certain portions of the proposed rules.

Amend §4503.B.2, *Certified Registered Nurse Anesthetist*, to insert the words “across the life span” after the word “patients” and before the word “under.”

Amend §4505, *Role*, to insert the word “certified” before the words “nurse midwives” and before the words “nurse practitioner.”

Amend §4505, *Role*, to insert the words “certified registered” before the words “nurse anesthetists.”

Amend §4505, *Specialty* (formally *Subspecialty*), to repeal the definition in its entirety.

No fiscal or economic impact will result from the amendments proposed in this notice.

A public hearing pursuant to R.S. 49:968(H)(2) will be conducted November 25, 2013 at 10 a.m. at the office of the board, 17373 Perkins Road, Baton Rouge, LA 70810.

The substantive changes are available for viewing on the Louisiana state Board of Nursing website under Board Information, Regulatory Progress, at www.lsbns.state.la.us.

Barbara Morvant
Executive Director

1310#038

POTPOURRI

Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
W. H. Lown	Caddo Pine Island	S	King	001	56379
H & H Oil & Gas Corp.	Monroe	M	Monroe Gas Unit	001	89632
Great Southern Oil & Gas Co Inc	Port Barre	L	H L Garland Et Al	002	190651(30)
Lanier & Rogers	Wildcat-No La Shreveport Dist	S	Paul Est	002	16821
Total Minatome Corporation	Lake Enfermer	L	T 1 Ra Sua;Meneil	001	151604(30)
Tri-State Sales & Production, Inc.	Rodessa	S	Rockefeller	001	18980
Arkansas Nat. Gas Co.	Wildcat-No La Shreveport Dist	S	Ballard Island Oil&Gas Co	001	298
J L Shoalmire Operating Co Inc	Converse	S	Fleming	005	95337
J L Shoalmire Operating Co Inc	Converse	S	B Ryals	003	95745
J L Shoalmire Operating Co Inc	Converse	S	M V Ryals	001	95797
J L Shoalmire Operating Co Inc	Converse	S	B Ryals	004	99935
J L Shoalmire Operating Co Inc	Converse	S	D B Ryals	005	101321
J L Shoalmire Operating Co Inc	Converse	S	Fleming	006	108404
J L Shoalmire Operating Co Inc	Converse	S	Fleming	001	174271
J L Shoalmire Operating Co Inc	Converse	S	Fleming	002	175727
J L Shoalmire Operating Co Inc	Converse	S	Fleming	003	179070
J L Shoalmire Operating Co Inc	Converse	S	B Ryals	001	179071
J L Shoalmire Operating Co Inc	Converse	S	Fleming	004	179632
J L Shoalmire Operating Co Inc	Converse	S	B Ryals	002	179706
J L Shoalmire Operating Co Inc	Converse	S	Parker Ryals A	001	202735
J L Shoalmire Operating Co Inc	Converse	S	Parker Ryals A	003	202737
J L Shoalmire Operating Co Inc	Converse	S	Parker Ryals A	004	202738
J L Shoalmire Operating Co Inc	Converse	S	Parker Ryals	001	202998
J L Shoalmire Operating Co Inc	Converse	S	Parker Ryals	002	202999
J L Shoalmire Operating Co Inc	Converse	S	Parker Ryals	004	203001
J L Shoalmire Operating Co Inc	Converse	S	Parker Ryals	005	203002
J L Shoalmire Operating Co Inc	Converse	S	Aaron	001	203174

Operator	Field	District	Well Name	Well Number	Serial Number
J L Shoalmire Operating Co Inc	Converse	S	Aaron	002	203175
J L Shoalmire Operating Co Inc	Converse	S	Aaron	004	203177
J L Shoalmire Operating Co Inc	Converse	S	Aaron	005	203178
J L Shoalmire Operating Co Inc	Converse	S	Aaron	007	203180
J L Shoalmire Operating Co Inc	Converse	S	Aaron	012	203185
J L Shoalmire Operating Co Inc	Converse	S	Aaron	013	203186
J L Shoalmire Operating Co Inc	Converse	S	Aaron	014	203187
J L Shoalmire Operating Co Inc	Converse	S	Aaron	015	203188
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	001	203430
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	002	203431
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	003	203432
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	004	203433
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	005	203434
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	006	203435
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	007	203436
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	008	203437
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	009	203438
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	010	203439
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	011	203440
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	012	203441
J L Shoalmire Operating Co Inc	Converse	S	Marvin Ryals	013	203442
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	001	203660
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	002	203661
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	003	203662
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	004	203663
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	005	203664
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	006	203665
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	007	203666
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	008	203667
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	009	203668
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	010	203669
J L Shoalmire Operating Co Inc	Converse	S	Bernard Ryals	011	203670
Winbeau Oil & Gas Co., Inc.	Bracky Branch	S	Rayburn Covington	001	201770
Winbeau Oil & Gas Co., Inc.	Bracky Branch	S	U Gr Ra Sui, Rayburn Covington	001-D	203529
Winbeau Oil & Gas Co., Inc.	Bracky Branch	S	U Gr Ra Sup, Bethard	001	210671
Winbeau Oil & Gas Co., Inc.	Bracky Branch	S	International Paper Co	001	222715

Operator	Field	District	Well Name	Well Number	Serial Number
Winbeau Oil & Gas Co., Inc.	Bracky Branch	S	James Ra Sua;Mccoy	001	226039
Black Gold Resources Llc	Greenwood-Waskom	S	Hendrick	002	105980
Black Gold Resources Llc	Greenwood-Waskom	S	Hendrick	003	195289

POTPOURRI

**Department of Public Safety and Corrections
Office of State Police**

Public Hearing—Substantive Changes to Proposed Rule Amendments—Towing, Recovery and Storage (LAC 55:I.1905, 1913, 1943 and 1947)

James H. Welsh
Commissioner

1310#023

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Underwater Obstruction Latitude/Longitude Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 22 claims in the amount of \$100,980.78 were received for payment during the period September 1, 2013 - September 30, 2013

There were 19 paid and 3 denied.

Latitude/Longitude Coordinates, In Degree Decimal Minutes, of reported underwater obstructions are:

29 04.200	90 40.700	Terrebonne
29 04.715	90 47.185	Terrebonne
29 05.303	90 41.354	Terrebonne
29 08.355	90 06.476	Lafourche
29 12.510	90 19.942	Lafourche
29 18.509	89 47.161	Plaquemines
29 18.693	89 51.328	Plaquemines
29 18.973	89 51.528	Plaquemines
29 26.182	90 33.742	Terrebonne
29 28.730	91 58.294	Iberia
29 29.910	92 19.373	Vermilion
29 35.238	90 02.270	Jefferson
29 36.176	89 34.366	Plaquemines
29 36.335	92 00.284	Iberia
29 40.633	89 30.394	Saint Bernard
29 40.950	89 28.725	Saint Bernard
29 45.592	93 21.225	Cameron
29 46.002	93 17.551	Cameron
29 49.662	93 20.997	Cameron
29 50.537	89 41.465	Saint Bernard
29 54.501	89 47.403	Saint Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-9388.

Stephen Chustz
Secretary

1310#030

The Department of Public Safety, Office of State Police published a Notice of Intent to amend its rules in the September 20, 2013, edition of the *Louisiana Register* (LR 39 No.9). The notice was incorrect in several respects. In order to correct the inaccurate amendments, the department proposes to make substantive changes to §§1905, 1913, 1943, and 1947 of the proposed Rule amendments so that, as amended, these provisions will read as set forth below.

In accordance with R.S. 49:968(H)(2), a public hearing on proposed substantive changes will be held by the department on October 29, 2013, at 9:00 a.m. at the offices of the Louisiana State Police (Room C), 7919 Independence Blvd., Baton Rouge, Louisiana 70806.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 19. Towing, Recovery and Storage

Subchapter A. Authority, Exemptions, Definitions, Scope

§1905. Definitions

A. ...

Non-consensual Towing—the movement or transportation of a vehicle by a tow truck without the prior consent or authorization of the owner or operator of the vehicle. This includes private property tows conducted in accordance with the provisions of R.S. 32:1736 and tows by law enforcement or other public agencies. Whenever an owner or operator of a vehicle requests a law enforcement officer or other public agency to initiate a tow, such tow shall be considered non-consensual and subject to Louisiana Public Service Commission tow rates.

Tow Truck—means any motor vehicle equipped with a boom or booms, winches, slings, tilt beds, semi-trailers, and/or similar equipment designed for the towing and/or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 39:

Subchapter B. Tow Truck License Plate; Required Insurance

§1913. Tow Truck License Plate

A. - A.1. ...

a. Car carrier companies which transport less than five motor vehicles and do not store or hold motor vehicles shall be licensed as tow trucks upon application and

submission of an affidavit to the Department of Public Safety and Corrections stating that the company does not store or hold motor vehicles and does not carry garage keeper's legal liability or garage liability insurance. These companies shall receive a "car carrier" endorsement on their required motor vehicle registration. This does not exclude the car carrier company from any other regulations as set by the Louisiana Towing and Storage Act.

2. - 2.b....

c. legal business entities such as corporations, limited liability companies, partnerships, limited liability partnerships, or other such legally recognized entities, whether registered with the office of the Secretary of State or not, should use their legally registered trade name as their business name. Such legally acknowledged entities shall include in the application:

2.c.i. - 3.b. ...

c. Tow truck operators or owners shall permanently affix and prominently display on both sides of tow trucks the legal trade name of their business, telephone number and city of the vehicle's domicile in lettering at least 2 ½ inches in height and not less than ¼ inch in width. Truck and trailer combinations used to transport vehicles may choose to mark either the truck or trailer.

A.3.d. - B.3.a.i. ...

ii. a tow truck has a GVWR or GCWR of 10,000 pounds or less and it shall not be used for towing vehicles for compensation; unless the year of manufacture is prior to 2007, in which case, a GVWR of 10,000 pounds shall not be cause for denial, or

B.3.a.iii. - C.1.c. ...

d. the applicant or employee that operates a tow truck is found to have been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession of a stolen vehicle(s) or stolen vehicle parts or employs someone convicted of one of the above stated offenses.

D. - D.1.c. ...

d. obtaining a tow truck license plate under false pretenses; or the applicant or employee that operates a tow truck is found to have been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession of stolen vehicle(s) or stolen vehicle parts or employs someone convicted of one of the above stated offenses.

D.1.e. - D.1.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 39:

Subchapter D. Vehicle Storage

§1943. Storage Rates

A. ...

B. Towing and/or storage facilities shall be staffed and open for business Monday thru Friday, 8 a.m. to 5 p.m., excluding state holidays. Employees staffing the facility must have access to vehicle storage records to assist in administrative inspections by the Department and be able to release vehicles and/or belongings. All storage records since the date of the last annual storage inspection must be readily accessible and available. Storage records prior to the last

annual inspection, if not readily available, shall be made available by the end of the next business day.

1. Licensed storage facilities that operate as a mechanic or repair shop and do not conduct non-consensual tows may set their own business hours provided they do not charge gate fees and give notice to the Department by noting their days and hours of operation on their storage license application or renewal form. The storage facility must be open for business at least five days a week. These hours must be clearly posted along with other required information in accordance with §1941.D of this Chapter. Storage Facilities that do not adhere to the hours of operation listed on their storage license application or renewal form shall be in violation of failing to staff their facility. Towing and/or storage facilities shall be staffed and open for business Monday thru Friday, 8 a.m. to 5 p.m., excluding state holidays.

C. ...

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 39:

Subchapter E. Rotation List

§1947. Law Enforcement Tow Truck Rotation List

A. - A.5.d. ...

6. No law enforcement officer shall recommend to the vehicle owner or operator a specific tow company to conduct a tow. All tows shall be referred to the law enforcement rotation list or the authorized contractor for the law enforcement agency. When the owner or operator exercises their option to select the tow company, such selection shall be duly noted on the tow invoice or the law enforcement record of the incident.

B. ...

1. Every person, firm, corporation or other entity who participates in a law enforcement Tow Rotation Program, and is engaged in, or associated with the towing, removal or storage of any wrecked, abandoned, disabled or other designated vehicle, shall comply with the department's procedural orders and all applicable state laws, and administrative regulations governing the towing and storage of vehicles including, but not limited to, R.S. 32:1711 et seq., and LAC 55:I.1901 et seq.

C. - C.4. ...

5. not be owned, operated by, or knowingly employ any person that operates tow trucks who has been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle, possession of stolen vehicles or vehicle parts.

C.6. - F. ...

1. Each tow truck and operator shall meet all operational requirements mandated for tow trucks in R.S. 23, 32, and 47 as well as LAC 55. All tow trucks in a business's fleet shall also be equipped with the following:

F.1.a. - F.2.f. ...

g. wear an approved ANSI Class II or III reflective vest that is in good condition and fits the operator when working on or near the roadway during crash or vehicle recovery.

F.3. - G.5.a. ...

6. Interference with commissioned officers at the scene or failure to comply with the officer's instructions is prohibited. No tow truck owner, operator, or employee shall be required to follow a directive or order that is unsafe or beyond the operational standard or capacity of any equipment being used in cleanup or in the removing of the roadway hazard. If a tow truck owner or operator refuses to follow a directive or order because of an unsafe condition, no adverse action by a law enforcement agency shall be taken against such owner or operator including removal from any rotation list.

G.7. - H.2.a.iv.(b). ...

(c). at least 100 feet of wire or synthetic rope, except that a slide back and tilt bed carrier may have only 50 feet of wire or synthetic rope, with a minimum diameter of 3/8 inch, rated at a minimum of 12,000 pounds breaking strength.

H.2.a.v. - H.2.b.iv.(a). ...

b. power winch rated not less than 20,000 pounds, dual winches must have a minimum of 150 feet wire or synthetic rope per winch with a breaking strength of 21,000 pounds and 1/2 inch in diameter.

H.2.b.v. - H.2.b.vi.(b) ...

(c). at least 50 feet of 3/8 inch cable or synthetic rope.

H.2.b.vi.(d). - H.2.c.iv.(b). ...

c. minimum of 200 feet of wire or synthetic rope per winch of at least 9/16 inch diameter and rated at breaking strength of 27,000 pounds.

H.2.c.v. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 36:456 (March 2010), LR 36:2580 (November 2010), amended LR 39:

Jill Boudreaux
Undersecretary

1310#040

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