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Executive Orders

EXECUTIVE ORDER KBB 07-15

State Employee Pay Raise for Unclassified State Service

WHEREAS, unclassified state employees have not received a general increase since 1990; and

WHEREAS, Act 18 of the 2007 Regular Session of the Louisiana Legislature appropriated funds for a one thousand five hundred dollars (\$1,500) per year general increase for employees in unclassified state service.

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, 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: Definitions:

Unless the context of this Order clearly indicates otherwise, the words and terms used in this Order shall be defined as follows:

A. "State service" means current employment in the executive branch of state government, including state supported schools, agencies and universities. To constitute state service, the service or employment must have been performed for a Louisiana public entity included in the state operating budget with the exception of employees of a system authorized by the Louisiana Constitution or legislative act to manage and supervise its own system.

B. "Unclassified state service" means those positions of state service as defined in Article X, Sections 2 and 42 of the Louisiana Constitution of 1974, which are not positions in the classified state service.

SECTION 2: Applicability:

A. Except as provided in Paragraph B of this Section, the rules and policies established by this Order shall be applicable to all full-time and part-time officers and employees in unclassified state service of the state of Louisiana.

B. The rules and policies established by this Order shall not be applicable to the following officers and employees in unclassified state service of the state of Louisiana:

1. Students and graduate assistants;
2. State employees who are employed by public entities and are paid entirely by revenues which are not appropriated in Acts 18 or 48 of the 2007 Regular Session; provided however, that nothing herein shall prohibit a public entity from implementing a pay increase for such state employee from available funds;
3. Faculty of public higher education institutions who, per the Board of Regents guidelines, are eligible for the Faculty Pay Raise provided in Act 18 of the 2007 Regular Session of the Louisiana Legislature;
4. Adjunct faculty of public higher education institutions;
5. Unclassified employees who will receive the Faculty Pay Raise, Teacher Pay Raise or Support Worker Pay Raise provided in Act 18 of the 2007 Regular Session of

the Louisiana Legislature, including, but not limited to, employees of special schools as defined in Schedule 19 of Act 18 of the 2007 Regular Session; University Laboratory Schools and Department of Public Safety and Corrections;

6. Intermittent employees being those employees employed in state service who are not hired to work on a regularly scheduled basis;

7. Temporary employees in the unclassified service of the executive branch whose employment is not reasonably expected to exceed one (1) year or twelve (12) consecutive calendar months;

8. Seasonal employees being those individuals employed on a non-continuous basis for a recognized peak work load project;

9. Elected local or statewide officials;

10. Unclassified employees of Registrars of Voters who will receive increases as a result of Act 254 of the 2007 Regular Session of the Louisiana Legislature; and

11. Appointed members of state boards and commissions, whose compensation is established in the Louisiana Revised Statutes of 1950.

SECTION 3: Disbursement

The pay increase for employees in unclassified state service who satisfy the criteria established in Section 2(A) of this Order shall be applied at the rate of seventy-two cents per hour.

SECTION 4: Compliance

All departments, agencies, and officers and employees of the state, or any political subdivision thereof within the executive branch of state government effected by this Order shall comply with, be guided by, and cooperate in the implementation of the provisions of this Order.

SECTION 5: Effective Date

The provisions of this Order shall be effective July 1, 2007 and shall remain 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 18th day of July, 2007.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0708#065

EXECUTIVE ORDER KBB 07-16

Bond Allocation—Parish of DeSoto, State of Louisiana

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana

Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the parish of DeSoto has requested an allocation from the 2007 Ceiling to be used to finance the acquisition, construction and equipping of certain sewage and solid waste disposal facilities at International Paper Company's paper mill located at 1202 Highway 509, city of Mansfield, parish of DeSoto, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$5,000,000	Parish of DeSoto, State of Louisiana	International Paper Company

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before October 17, 2007.

SECTION 4: This Order is effective upon signature and shall remain 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 19th day of July, 2007.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0708#066

EXECUTIVE ORDER KBB 07-17

State Employee Pay Raise for Unclassified State Service
Amends Executive Order No. KBB 07-15

WHEREAS, Executive Order No. KBB 2007-15, issued on July 18, 2007, established rules and policies for the application of the one thousand five hundred dollars (\$1,500) per year general increase for employees in unclassified state service, provided by Act 18 of the 2007 Regular Session of the Louisiana Legislature; and

WHEREAS, it is necessary to amend Executive Order No. KBB 2007-15 to clarify its application to unclassified employees of registrars of voters;

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, 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: Section 2 of Executive Order No. KBB 2007-15, issued on July 18, 2007, is amended as follows:

Applicability:

A. Except as provided in Paragraph C of this Section, the rules and policies established by this Order shall be applicable to all full-time and part-time officers and employees in unclassified state service of the state of Louisiana.

B. The rules and policies established by this Order shall not be applicable to the following officers and employees in unclassified state service of the state of Louisiana:

1. Students and graduate assistants;
2. State employees who are employed by public entities and are paid entirely by revenues which are not appropriated in Acts 18 or 48 of the 2007 Regular Session; provided however, that nothing herein shall prohibit a public entity from implementing a pay increase for such state employee from available funds;
3. Faculty of public higher education institutions who, per the Board of Regents guidelines, are eligible for the Faculty Pay Raise provided in Act 18 of the 2007 Regular Session of the Louisiana Legislature;
4. Adjunct faculty of public higher education institutions;
5. Unclassified employees who will receive the Faculty Pay Raise, Teacher Pay Raise or Support Worker Pay Raise provided in Act 18 of the 2007 Regular Session of the Louisiana Legislature, including, but not limited to, employees of special schools as defined in Schedule 19 of Act 18 of the 2007 Regular Session; University Laboratory Schools and Department of Public Safety and Corrections;
6. Intermittent employees being those employees employed in state service who are not hired to work on a regularly scheduled basis;
7. Temporary employees in the unclassified service of the executive branch whose employment is not reasonably expected to exceed one (1) year or twelve (12) consecutive calendar months;

8. Seasonal employees being those individuals employed on a non-continuous basis for a recognized peak work load project;

9. Elected local or statewide officials;

10. Appointed members of state boards and commissions, whose compensation is established in the Louisiana Revised Statutes of 1950.

C. The general increase for employees in unclassified state service shall be applied as a cost of living increase for unclassified employees of registrars of voters.

SECTION 2: All other sections, subsections, and paragraphs of Executive Order No. KBB 2007-15, issued on July 18, 2007, shall remain in full force and effect.

SECTION 3: The provisions of this Order shall be effective upon signature and shall remain 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 6th day of August, 2007.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0708#067

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences

ULV Malathion Applications (LAC 7:XXIII.145)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:3203, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached rules and regulations for the application of an ultra low volume insecticide to be applied to cotton fields infested with plant bugs.

The applications of insecticides in accordance with the current concentration regulations have not been sufficient to control plant bugs. Failure to allow the concentrations in ultra low volume (ULV) malathion applications will allow the plant bugs the opportunity to destroy the cotton during the growing season, effectively destroying the cotton crop. The destruction of the cotton crop or a substantial portion of the cotton crop will cause irreparable harm to the economy of northern Louisiana and to Louisiana agricultural producers thereby creating an imminent peril to the health and safety of Louisiana citizens.

This Emergency Rule becomes effective upon the signature of the commissioner, July 27, 2007, and shall remain in effect until 11:59 p.m. on August 21, 2007.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticide

Chapter 1. Advisory Commission on Pesticides

§145. Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications

A - A.5.b.xxxvi ...

c. malathion insecticide applied with the following conditions to control plant bugs in cotton.

i. The commissioner hereby declares that prior to making any aerial application of ULV malathion to cotton, the aerial owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing. Upon notification, LDAF shall inspect the aircraft prior to any ULV applications.

ii. Spray shall be applied, handled, and stored in accordance with all conditions specified by State or Federal regulations, including the strict observance of any buffer zones that may be implied.

iii. Aerial applicators shall strictly comply with any and all restrictions or mitigative factors, in regard to sensitive areas, including occupied buildings (churches, schools, hospitals, and homes), lakes, reservoirs, farm ponds, parks, and recreation areas that may be identified by Commissioner, and such restriction and mitigation are to be strictly complied with and observed by said aerial applicators.

iv. Aerial applicators will adjust flight patterns, to the degree possible, to avoid or minimize flying over

sensitive areas. This restriction does not apply to over flight between take-off and the commencement of spray operations, or over flight between termination of spray operations and landing.

v. Aerial applicators shall be alert to all conditions that could cause spray deposit outside field boundaries and use their good faith efforts, including adjustment or termination of operations, to avoid spray deposit outside field boundaries.

vi. Aerial spraying shall not be conducted when wind velocity exceeds 10 m.p.h.

vii. Aerial applicators will terminate application if rainfall is imminent.

viii. Insecticide spray will not be applied in fields where people or animals are present. It is the applicator's responsibility to determine if people are present prior to initiating treatment.

ix. Spraying shall not be conducted in fields where other aircraft are working.

x. All mixing, loading, and unloading will be in an area where an accidental spill can be contained and will not contaminate a stream or other body of water.

xi. All aerial applications of insecticide shall be at an altitude not to exceed 5 feet above the cotton canopy. However, in fields that are not near sensitive areas, if infield obstructions make the five-foot aerial application height not feasible, then the aerial height may be extended to such height above the cotton canopy as is necessary to clear the obstruction safely.

xii. The aircraft tank and dispersal system must be completely drained and cleaned before loading. All hoses shall be in good condition and shall be of a chemical resistant type.

xiii. Insecticide tank(s) shall be leak-proof and spray booms of corrosion resistant materials, such as stainless steel, aluminum, or fiberglass. Sealants will be tested before use.

xiv. The tank(s) in each aircraft shall be installed so the tank(s) will empty in flight. Sight gauges or other means shall be provided to determine the quantity contained in each tank before reloading.

xv. A drain valve shall be provided at the lowest point of the spray system to facilitate the complete draining of the tanks and system while the aircraft is parked so any unused insecticide can be recovered.

xvi. A pump that will provide the required flow rate at not less than 40 pounds per square inch (psi) during spraying operation to assure uniform flow and proper functioning of the nozzles. Gear, centrifugal or other rotary types, will be acceptable on aircraft with a working speed above 150 miles per hour.

xvii. ULV spraying systems with a pumping capacity that exceeds the discharge calibration rate shall have the bypass flow return to the tank bottom in a manner that prevents aeration and/or foaming of the spray formulation. Pumps utilizing hydraulic drive or other variable speed drives are not required to have this bypass,

provided the pump speed is set to provide only the required pressure and the system three-way valve is used for on/off control at full throw position. Any bypass normally used to circulate materials other than the ULV will be closed for ULV spraying.

xviii. Spray booms will be equipped with the quantity and type of spray nozzles specified by the Boll Weevil Eradication Program. The outermost nozzles (left and right sides) shall be equal distance from the aircraft centerline and the distance between the two must not exceed three-fourths of the overall wing span measurement. For helicopters, the outermost nozzles must not exceed three-fourths of the rotor span. For both fixed wing and helicopters, the program will accept the outermost nozzles between 60 percent and 75 percent of the wingspan/rotor span. Longer spray booms are acceptable provided modifications are made to prevent the entrapment of air in the portion beyond the outermost nozzle. Fixed wing aircraft not equipped with a drop type spray boom may require drop nozzles in the center section that will position the spray tips into smoother air to deliver the desired droplet size and prevent spray from contacting the tail wheel assembly and horizontal stabilizer. Most helicopters will be required to position the center nozzles behind the fuselage and dropped into smooth air in order to achieve the desired droplet size.

xix. Nozzles, diaphragms, gaskets, etc. will be inspected regularly and replaced when there is evidence of wear, swelling, or other distortion in order to assure optimum pesticide flow and droplet size. Increasing pressure to compensate for restricted flow is unacceptable. A positive on/off system that will prevent dribble from the nozzles is required.

xx. A positive emergency shut-off valve between the tank and the pump, as close to the tank as possible. This valve shall be controllable from the cockpit and supplemented by check valves and flight crew training which will minimize inadvertent loss of insecticide due to broken lines or other spray system malfunction.

xxi. Bleed lines in any point that may trap air on the pressure side of the spraying system.

xxii. An operational pressure gauge with a minimum operating range of 0 to 60 psi and a maximum of 0 to 100 psi visible to the pilot for monitoring boom pressure.

xxiii. A 50-mesh in-line screen between the pump and the boom and nozzle screens as specified by the nozzle manufacturer.

xxiv. Aircraft equipped so nozzle direction can be changed from 45 degrees down and back to straight back when it is necessary to change droplet size.

xxv. All nozzles not in use must be removed and the openings plugged.

xxvi. Nozzle tips for all insecticides shall be made of stainless steel.

xxvii. Aircraft shall have an operational Differentially Corrected Global Positioning System (DGPS) and flight data logging software that will log and display the date and time of the entire flight from take-off to landing and differentiate between spray-on and spray-off.

xxviii. Aircraft shall have a DGPS with software designed for parallel offset in increments equal to the assigned swath width of the application aircraft. Fixed towers, portable stations, satellite, Coast Guard, or other

acceptable methods may provide differential correction. However, the differential signal must cover the entire project area. In fringe areas from the generated signal, an approved repeater may be used. The system shall be sufficiently sensitive to provide immediate deviation indications and sufficiently accurate to keep the aircraft on the desired flight path with an error no greater than 3 feet. Systems that do not provide course deviation updates at one-second intervals or less will not be accepted.

xxix. A course deviation indicator (CDI) or a course deviation light bar (also CDI) must be installed on the aircraft and in a location that will allow the pilot to view the indicator with direct or peripheral vision without looking down. The CDI must be capable of pilot selected adjustments for course deviation indication with the first indication at 3 feet or less.

xxx. The DGPS must display to the pilot a warning when differential correction is lost, the current swath number, and cross-track error. The swath advance may be set manually or automatically. If automatic is selected, the pilot must be able to override the advance mode to allow respraying of single or multiple swaths.

xxxi. The DGPS must be equipped with a software for flight data logging that has a system memory capable of storing a minimum of 3 hours of continuous flight log data with the logging rate set at one second intervals. The DGPS shall automatically select and log spray on/off at one-second intervals while ferry and turnaround time can be two-second intervals. The full logging record will include position, time, date, altitude, speed in M.P.H., cross-track error, spray on/off, aircraft number, pilot, job name or number, and differential correction status. The flight data log software shall be compatible with DOS compatible PC computers, dot matrix, laser, or ink jet printers and plotters. The system must compensate for the lag in logging spray on/off. The system will display spray on/off at the field boundary without a sawtooth effect. Must be capable to end log files, rename, and start a new log in flight.

xxxii. The software must generate the map of the entire flight within a reasonable time. Systems that require five minutes or more to generate the map for a three-hour flight on a PC (minimum a 386 microprocessor with 4 MB of memory) will not be accepted. The flight path must clearly differentiate between spray on and off when viewed on the monitor or the printed hard copy. The software must be capable of replaying the entire flight in slow motion; stopping and restarting the replay at any point during the flight; zooming to any portion of the flight for viewing in greater detail and printing the entire flight or the zoomed-in portion. It must have a measure feature that will measure distance in feet between swaths or any portion of the screen and to be able to determine the exact latitude/longitude at any point on the monitor.

xxxiii. Flight information software provided by the applicator must have the capability to interface with MapInfo (version 3.0 or 4.0). The interface process must be "user friendly", as personnel will be responsible to operate the system in order to access the information.

xxxiv. Application of ULV malathion shall be at an application rate of 12 oz. per acre with no dilutions or tank mixes. Provided, however, that any Emulsifiable Concentrate (EC) formulation of pyrethroid insecticide labeled for Ultra

Low Volume (ULV) applications may be tank mixed, but only with Malathion ULV for plant bugs on cotton. Only one pryrethroid at a time may be mixed pursuant to this clause.

xxxv. Applications of ULV malathion shall be restricted to seven-day intervals.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), amended LR 26:1964 (September 2000), LR 33:

Bob Odom
Commissioner

0707#020

DECLARATION OF EMERGENCY

Department of Economic Development Office of Business Development Louisiana Economic Development Corporation

Economic Development Award Program (EDAP)
and Economic Development Loan Program (EDLOP)
(LAC 13:III.131 and 133)

The Louisiana Department of Economic Development, Office of Economic Development, and the Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), are amending and supplementing portions of LAC 13:III., Chapter 1, relating to certain provisions of the rules of the Economic Development Award Program (EDAP), and particularly the Economic Development Loan Program (EDLOP), under the authority of R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341. These Rules, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective August 17, 2007, and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a permanent Rule, whichever occurs first.

The Department of Economic Development, Office of Economic Development, and the Louisiana Economic Development Corporation, have found an immediate need to amend and supplement certain provisions of the rules regarding the Economic Development Award Program (EDAP), and particularly the Economic Development Loan Program (EDLOP). The amendments to the EDLOP rules expand the Preamble and Purpose provided in Article 131 B, and the Definitions provided in Article 133 for the definition of the Project which will promote economic development in order to successfully secure the creation or retention of jobs by business entities newly locating in Louisiana or which may already exist in Louisiana and are expanding their operations, but require state assistance for such development as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana, all of which will promote economic development in the state of Louisiana. None of the other provisions of these Rules are being amended by these revisions. Without this Emergency Rule the public welfare may be harmed as the result of the loss of business investment and economic development

projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 1. Economic Development Award Program (EDAP) and Economic Development Loan Program (EDLOP)

Subpart A. General Rules

§131. Economic Development Loan Program (EDLOP); Preamble and Purpose

A.

B. The purpose of this program is to assist in the financing or loan funding of privately-owned property and improvements, including the purchase or leasing of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, for machinery and equipment purchases and rebuilding, and for additional costs related to and incurred in connection with the relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, all for business enterprises newly locating in Louisiana or for businesses already existing in this State which are expanding their operations and that require state assistance for such development, rebuilding or other such improvement and/or relocation, and for which LED and LEDC assistance is requested under this program, all of which will promote economic development and provide an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:906 (April 2005), amended LR 33:

§133. Definitions

* * *

Project (or Infrastructure Project)—the undertaking for which a loan award is sought and/or is granted hereunder for the purchase of a to be privately-owned or a leased building site, or for the purchase, construction, improvement, expansion, renovation, rebuilding or expansion of privately-owned or leased buildings and their surrounding property, including parking facilities, private roads, railroad spurs and utility needs, including electrical, gas, telephone, water and sewerage lines, as well as certain qualified machinery and equipment, and for additional costs related to and incurred in connection with the relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, for a private entity which will promote economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development,

Michael J. Olivier
Secretary

0708#068

DECLARATION OF EMERGENCY

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

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

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, R.S. 56:797.D(2)].

The Emergency Rules are 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 July 19, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0888E)

**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 these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Louisiana Resident—

a. - g.iv. ...

h. For any dependent student graduating from an out-of-state high school during the 2006-2007 academic year (high school) whose parent or court-ordered custodian was a member of the United States armed forces who, in the year 2006, moved from Louisiana under permanent change of station orders and retired from the armed forces, and changed his military personnel records to reflect a change of his state of legal residence from Louisiana to another state, shall meet the requirements of this Item, provided that such parent or court-ordered custodian changes his military personnel records from the other state to reestablish Louisiana as his state of legal residence no later than July 1, 2007, and has filed a Louisiana state income tax return for the two years preceding the date of the dependent's graduation from high school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, 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), re promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 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:

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

§703. Establishing Eligibility

A. - A.5.a.i.(d). ...

ii.(a). For students graduating in academic year (high school) 2007-2008 and prior, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science, Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Mathematics I, Advanced Mathematics II
Chemistry	Chemistry Com
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History
Civics	AP American Government
*Applied Mathematics III was formerly referred to as Applied Geometry	

(b). For students graduating in academic year (high school) 2006-2007 and after, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III

Core Curriculum Course	Equivalent (Substitute) Course
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Mathematics I, Advanced Mathematics II
Chemistry	Chemistry Com
Fine Arts Survey	Speech III and Speech IV (both units)
Western Civilization	European History
Civics	AP American Government
*Applied Mathematics III was formerly referred to as Applied Geometry	

A.5.a.iii. - 6.a.iii. ...

b. if qualifying under §703.A.5.c:

i. is a Louisiana resident, except as defined in Subparagraph h of the definition of Louisiana resident in §301:

(a). the state's reported prior year average plus 3 points, rounded, but never less than 23 for the Opportunity Award; or

(b). a 26 for the Performance Award; or

(c). a 30 for the Honors Award; and

ii. is a *Louisiana resident* as defined in Subparagraph h of the definition of *Louisiana resident* in §301:

(a). the state's reported prior year average plus 2 points, rounded, but never less than 22 for the Opportunity Award; or

(b). a 25 for the Performance Award; or

(c). a 29 for the Honors Award; and

c.i. if completed the 12th grade level of an approved home study program during or before the academic year (high school) 2003-2004 and qualifying under §703.A.5.d;

(a). the state's reported prior year average plus 3 points, rounded, but never less than 23 for the Opportunity Award; or

(b). a 26 for the Performance Award; or

(c). a 30 for the Honors Award; and

ii. if completed the 12th grade level of an approved home study program during or after academic year (high school) 2004-2005 and through academic year (high school) 2006-2007 and qualifying under §703.A.5.d;

(a). the state's reported prior year average plus 2 points, rounded, but never less than 22 for the Opportunity Award; or

(b). a 25 for the Performance Award; or

(c). a 29 for the Honors Award; and

iii. if completed the 12th grade level of an approved home study program during or after the academic year (high school) 2007-2008 and after, and qualifying under §703.A.5.d;

(a). the state's reported prior year average plus 2 points, rounded, but never less than 22 for the Opportunity Award; or

(b). a 24 for the Performance Award; or

(c). a 28 for the Honors Award; and

A.6.d.i. - 8. ...

B. Students qualifying:

1. under §703.A.5.a and b during or before academic year (high school) 2006-2007, must have attained a cumulative high school grade point average, based on a 4.00 maximum scale, of at least:

a. a 2.50 for the Opportunity Award; or

b. a 3.50 for the Performance or Honors Awards;

2. under §703.A.5.a and b during or after academic year (high school) 2007-2008, must have attained a cumulative high school grade point average, based on a 4.00 maximum scale, of at least:

a. a 2.50 for the Opportunity Award; or

b. a 3.00 for the Performance or Honors Awards;

3. under §703.A.5.f and graduating in academic year (high school) 2000-2001 through 2005-2006, must have attained a TOPS cumulative high school grade point average, based on a 4.00 maximum scale, of at least a 3.00 for the Performance Award.

C. - J.3.b.ii. ...

4. To establish eligibility for a TOPS Opportunity, Performance or Honors Award, a displaced student who has been certified by the principal or headmaster to have graduated during the 2006-2007 school year from an out-of-state high school that meets the criteria of an eligible out-of-state high school as provided in §1701.A.4 and 5 and receives a Louisiana Distance Diploma from the Board of Elementary and Secondary Education must meet all of the requirements of §703.A - I.8 above, except as follows:

a. A displaced student shall not be required to have for the respective awards a higher minimum composite score on the ACT or on the Scholastic Aptitude Test than required for a student who graduates from an eligible Louisiana high school provided such student has, for an opportunity award, a cumulative high school grade point average on all courses on the high school transcript of at least 2.50 calculated on a 4.00 scale or, for a performance or honors award, a cumulative high school grade point average on all courses on the high school transcript of at least 3.50 calculated on a 4.00 scale.

b. A displaced student shall be deemed to meet the Louisiana residency requirement if:

i. such dependent or independent student actually resided in Louisiana during his entire 10th grade year of high school and was enrolled for such time in an eligible Louisiana high school; or

ii. such dependent student has a parent or court-ordered custodian who actually resided in a parish listed in §703.J.2.a above for at least the 12 months prior to August 26, 2005, or in a parish listed in §703.J.2.b above for at least the 12 months prior to September 20, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, 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 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:

Chapter 8. TOPS-Tech Award

§803. Establishing Eligibility

A. – A.7.a. ...

b.i. if qualifying under §803.A.5.b or c and is a Louisiana resident, except as defined in Subparagraph h of the definition of *Louisiana Resident* in §301, an ACT composite of at least 20; or

ii. if qualifying under §803.A.5.b is a Louisiana Resident as defined in Subparagraph h of the definition of *Louisiana Resident* in §301, an ACT composite of at least 19; and

A.7.c. - B.3.b.ii. ...

4. To establish eligibility for a TOPS Tech Award, a displaced student who has been certified by the principal or headmaster to have graduated during the 2006-2007 school year from an out-of-state high school that meets the criteria of an eligible out-of-state high school as provided in §1701.A.4 and 5 and receives a Louisiana Distance Diploma from the Board of Elementary and Secondary Education must meet all of the requirements of §703.A.-I.8 above, except as follows.

a. A displaced student shall not be required to have for the respective awards a higher minimum composite score on the ACT or on the Scholastic Aptitude Test than required for a student who graduates from an eligible Louisiana high school provided such student has a cumulative high school grade point average on all courses on the high school transcript of at least 2.50 calculated on a 4.00 scale.

b. A displaced student shall be deemed to meet the Louisiana residency requirement if:

i. such dependent or independent student actually resided in Louisiana during his entire 10th grade year of high school and was enrolled for such time in an eligible Louisiana high school; or

ii. such dependent student has a parent or court-ordered custodian who actually resided in a parish listed in §703.J.2.a above for at least the 12 months prior to August 26, 2005, or in a parish listed in §703.J.2.b above for at least the 12 months prior to September 20, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:

George Badge Eldredge
General Counsel

0708#016

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

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

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and repromulgate 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, R.S. 56:797.D(2)].

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

This Declaration of Emergency is effective July 19, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0890E)

Title 28

EDUCATION

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

Chapter 14. Dual Enrollment Program

§1401. General Provisions

A. The Dual Enrollment Program is administered by the Louisiana Office of Student Financial Assistance (LOSFA) in accordance with a memorandum of understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission (LASFAC).

B. Description, History and Purpose. The Dual Enrollment Program is established to provide funding to Louisiana public postsecondary institutions that enroll eligible 11th and 12th grade Louisiana public high school students in college degree, developmental, or work skills courses. The purpose of the Dual Enrollment Program is to provide an incentive for qualified Louisiana public high school students to prepare for a postsecondary education or career.

C. **Effective Date.** Dual Enrollment Program payments shall be made beginning with the 2007-2008 award year to postsecondary institutions for 11th and 12th grade students meeting the eligibility criteria set forth in this Chapter.

D. **Eligible Semesters/Terms.** The Dual Enrollment Program will pay for enrollment in each college course during each semester or term of the academic year. Dual Enrollment Program will not pay for summer semesters or sessions.

E. **Award Amount.** The Dual Enrollment Program will pay postsecondary institutions \$100 per college credit hour, not to exceed \$300 per course, for each course in which the student is eligible to enroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1403. 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.

Academic Year—the academic year begins with the fall semester or term of the award year, includes the winter term, if applicable, and concludes with the completion of the spring semester or term.

College Degree Course—a course in an academic subject at a Louisiana postsecondary institution that generates postsecondary institutional credit and appears on the current Board of Regents' Statewide General Education Course Articulation Matrix.

Enrichment/Developmental Course—an English or mathematics course at a Louisiana postsecondary institution that generates postsecondary institutional credit, but not degree credit, and is designed to prepare the student for college-level instruction.

Postsecondary Institution—Louisiana public colleges or universities.

Work Skills Course—a course at a Louisiana postsecondary institution in a skill or occupational training area that is designed to lead to an industry-based certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1405. Establishing Eligibility

A. To establish eligibility for the Dual Enrollment Program, all student applicants must meet the following criteria:

1. be in the 11th or 12th grade in a Louisiana public high school;
2. be working towards and on track to complete the Regents/TOPS core curriculum by high school graduation;
3. have taken either the PLAN or ACT assessment and those scores are on file at the high school;
4. have completed and submitted a Dual Enrollment Program application to the high school in which the student is enrolled;

5. be approved by the high school in which the student is enrolled to participate in the program and to enroll in the course or courses; and

6. be enrolled in a course for which both high school and college credit is available and is for which a Dual Enrollment Program payment is made.

B. Enrollment in a College Degree Course. In addition to the eligibility criteria in Paragraphs A.1-6, a student must have a PLAN or ACT:

1. composite score of at least 17 to enroll in a college degree course;

2. English sub-score of at least 18 to enroll in an entry level English college degree course;

3. Mathematics sub-score of at least 18 to enroll in an entry level Mathematics college degree course.

C. Enrollment in an Enrichment/Developmental Course. In addition to the eligibility criteria in Paragraphs A.1-6, a student must have a PLAN or ACT:

1. composite score of at least 12 to enroll in an enrichment/developmental course;

2. English sub-score of at least 12 to enroll in an English enrichment/developmental course;

3. Mathematics sub-score of at least 12 to enroll in a mathematics enrichment/developmental course.

D. Enrollment in a Work Skills Course. In addition to the eligibility criteria in Paragraphs A.1-6, a student must have a PLAN or ACT Composite score of at least 12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1407. Continuing Enrollment

A. To continue enrollment in subsequent semesters/terms in the Dual Enrollment Program, the student must:

1. have successfully completed and earned credit in the last course(s) in which a student enrolled through the Dual Enrollment Program. If the student resigns or withdraws from a course, the student must receive permission from both the high school and college to continue enrollment in subsequent semesters/terms;
2. be in good standing at the postsecondary institution;
3. continue to meet eligibility requirements in §1405.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1409. Responsibilities of High Schools and School Boards

A. The student's high school shall:

1. determine whether the student meets the initial eligibility criteria provided in §1405.A;
2. approve or disapprove the student's participation in the program;
3. approve the course or courses in which the student will enroll;
4. provide to the postsecondary institution at which the student will be dually enrolled:
 - a. the student's approved application; and

b. the student's PLAN and/or ACT test scores, including sub-scores on those tests required to enroll in specific courses as provided in §1405.B.-D.

B. By forwarding the student's application to the postsecondary institution, the student's high school certifies that it has determined that the student has met all criteria in §1405.A to participate in the Dual Enrollment Program and has approved the student's participation in the program and the course or courses in which the student will be enrolled.

C. Upon completion of the course, the high school shall include the high school course, units attempted, units earned, and course grade on the student's permanent high school transcript.

D. At the end of each semester or term of participation in the program, the student's high school shall determine whether the student has met the criterion in §1407.A.1 for continued enrollment in the Dual Enrollment Program. If the student is determined eligible and the high school approves the student's continued participation in the program, it shall so notify the postsecondary institution and provide the course or courses approved for enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1413. Responsibilities of Louisiana Public Postsecondary Institutions

A. Each Louisiana public postsecondary institution that participates in the Dual Enrollment Program shall:

1. be responsible for determining that the student meets the PLAN or ACT eligibility criteria provided in §1405.B-D;

2. reserve Dual Enrollment Program funds when the student is accepted and enrolled in an appropriate course;

3. submit a payment request to LOSFA for students enrolled at the institution for whom a reservation was made as follows:

a. for each student eligible for the Dual Enrollment Program who is enrolled at the end of the 14th class day for semester schools, or the 9th class day for quarter and term schools;

b. Payment Request Amount. Each semester or term, the postsecondary institution in which a student is dually enrolled shall submit a payment request to LOSFA in the amount of \$100 per credit hour in which the student is enrolled, not to exceed \$300 for each college course;

c. the postsecondary institution may not charge the student any mandatory institutional and tuition fees for enrollment in a course paid for by the Dual Enrollment Program;

d. the payment request shall include the social security number, college code, high school code, term, date, college course type, hours attempted, and amount requested for each student;

4. for students who have been previously enrolled in the Dual Enrollment Program, determine whether the student is in good standing at that institution;

5. by submitting a payment request to LOSFA, the postsecondary institution certifies that:

a. the student meets the eligibility criteria provided in 1405.B-D for the college course in which the student is dually enrolled;

b. the student was enrolled at the end of the 14th class day for semester schools, or the 9th class day for quarter and term schools;

c. the student's high school has provided notice that the student is eligible for and has been approved to continue participation in the program; and

d. the student's high school has provided notice of the course or courses approved for enrollment;

e. the student is in good standing at the institution;

6. upon completion of the course, the postsecondary institution shall include the college course, credit attempted, credit earned, and course grade on the student's permanent postsecondary education transcript.

B. Records Retention

1. Records pertaining to the Dual Enrollment Program are subject to audit as required by LOSFA, LASFAC, the Louisiana Board of Regents, and the Louisiana Legislative Auditor. Postsecondary institutions shall maintain all records for a minimum of three years. All such records shall be made available upon request by LOSFA, LASFAC, the Louisiana Board of Regents and the Louisiana Legislative Auditor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1415. Responsibilities of the Board of Regents

A. The Board of Regents shall provide a student application to participate in the Dual Enrollment Program.

B. The Board of Regents shall maintain a Statewide General Education Course Articulation Matrix.

C. In the event that the funds appropriated for the Dual Enrollment Program are insufficient to pay for all eligible students, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1417. Responsibilities of LOSFA

A. Upon receipt of payment requests from institutions submitted in accordance with §1413.A, LOSFA shall pay the institution for each eligible student in accordance with §1413.

B. LOSFA shall conduct audits of the participating Louisiana public postsecondary institutions to ensure compliance with program requirements.

C. LOSFA shall provide the information necessary to fully inform Louisiana public high school students and their parents on the requirements of and procedures for applying for and maintaining eligibility for the Dual Enrollment Program.

D. LOSFA shall audit high schools and postsecondary institutions to ensure compliance with these rules.

E. LOSFA shall maintain a database of all students who have participated in the Dual Enrollment Program, including social security number, college code, high school code, term, date, college course type, hours attempted, payment amount, and aggregate amount paid.

F.1. After the receipt of fall semester or term payment requests, but no later than October 15 of each year, LOSFA shall determine whether sufficient funds are available for all

anticipated program payments for subsequent semesters and terms of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. In the event additional funds are not allocated for all program payments anticipated for subsequent semesters and terms during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1419. Responsibilities of LASFAC

A. LASFAC shall promulgate administrative rules in accordance with the Administrative Procedure Act, in consultation with the Louisiana Board of Regents and in accordance with a memorandum of understanding entered into by and between LASFAC and the Louisiana Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

George Badge Eldredge
General Counsel

0708#011

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

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

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and repromulgate 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, R.S. 56:797.D(2)].

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

has been included in the agency's budget for the 2007-2008 state fiscal year.

This Declaration of Emergency is effective July 19, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0889E)

Title 28

EDUCATION

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

Chapter 12. Louisiana GO Grant

§1201. General Provisions

A. Authority

1. In accordance with the requirements of Act 695 of the 2004 Regular Session of the Legislature, the Board of Regents developed the GO Grant Program. The program was reviewed and approved by both the Senate Committee on Education and the House Committee on Education on April 12, 2007.

2. The Louisiana GO Grant Program is administered by the Louisiana Office of Student Financial Assistance in accordance with the approved program and a memorandum of understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission.

B. Description, History and Purpose. The Louisiana GO Grant assists those students who can demonstrate financial need to pay for the cost of postsecondary education. The GO Grant is used to pay a portion of the cost of attendance at an eligible Louisiana postsecondary institution.

C. Maximum Award Amount

1. The maximum annual award for any student is \$2,000 per academic year.

2. The annual award amount for students who enroll less than full time shall be reduced based on the maximum amount the postsecondary institution is authorized to submit a payment request in §1211.C.2.

3. The maximum total lifetime award amount for any student is \$10,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1203. Definitions

A. The following definitions shall be applicable to the Louisiana GO Grant Program. 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.

Academic Year—the academic year begins with the fall semester or term of the award year, includes the winter term, if applicable, and concludes with the completion of the spring semester or term of the award year. Summer terms may be included in the academic year if the post-secondary institution provides students with Pell grants or financial need grants during the summer session, in which case, the academic year culminates with the summer session.

Administering Agency—the Louisiana Student Financial Assistance Commission through the Louisiana Office of Student Financial Assistance or LOSFA.

Age—a student's age is calculated by subtracting his birth year from the academic begin year he begins college enrollment. For example, a student who is born in 1983 who enrolls in college during the fall semester of 2007 or the spring semester of 2008 is 24.

Cost of Attendance—the total cost for a student to attend a particular postsecondary institution, usually expressed as an academic year figure. This cost shall be determined by the postsecondary institution attended in compliance with Title IV of the Higher Education Act of 1965, as amended, and shall be annually updated and adopted by the institution.

Credit-bearing Course—a course in which postsecondary education credit is attempted.

Dependent Student—a student who does not qualify as an independent student and is deemed to be dependent on his parents for support and therefore is required to include parental information on the Free Application for Federal Student Aid (FAFSA) or renewal FAFSA.

Education Allowance—\$2,000 per academic year.

Education Cost Gap (ECG)—

a. for postsecondary institutions, except a Louisiana public college that has been granted regional candidacy status and is eligible to participate in the Go Grant Program, the Louisiana Basic College Costs (LBCC) minus the federal Pell grant amount for a full time student;

b. for a Louisiana public college that has been granted regional candidacy status and is eligible to participate in the Go Grant Program, the Louisiana Basic College Costs (LBCC) minus the financial need grant amount at that institution for a full time student.

Enrollment—registration in programs of study for which a student may receive a Pell Grant or a financial need grant at a postsecondary institution.

Federal Pell Grant—the Pell Grant provided under Title IV of the Higher Education Act of 1965, as amended.

Financial Need Grant—an institutional grant provided by the state for students with financial need as evidenced by the data reported on the FAFSA at a Louisiana public college that has been granted regional candidacy status and is eligible to participate in the Go Grant Program.

First-Time Freshman—a student who, after high school graduation, has never attended any college or other postsecondary institution, including students enrolled in the fall term who attended college for the first time in the prior summer term after high school graduation and students who entered with advanced standing (college credits earned before graduation from high school).

Full-Time—a student enrolled in a postsecondary institution who is considered program full time by the school, or is enrolled in at least 12 semester credit hours, or 8 hours at a term school.

GO Grant Award Amount—the award amount actually paid during an academic year.

Half-Time—a student enrolled in a postsecondary institution who is not full time but is enrolled in at least 6 semester credit hours, or 4 hours at a term school.

Independent Student—a student who meets at least one of the criteria listed in Subparagraphs a-f or has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the Higher Education Act of 1965, as amended:

a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;

b. is currently serving on active duty for purposes other than training or is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm;

c. is an orphan or a ward of the court or was a ward of the court until age 18;

d. has legal dependents other than a spouse;

e. is a graduate or professional student;

f. is married.

Less Than Half-Time—a student enrolled in a postsecondary institution who is not full time and is enrolled in less than 6 semester credit hours or 4 hours at a term school.

Louisiana Basic College Costs (LBCC)—

a. for students enrolled at Louisiana public postsecondary institutions, the tuition and mandatory fees that are assessed a full time student for enrollment during the academic year at that institution, not including summer semesters or sessions, as approved on a yearly basis by the Louisiana Board of Regents, plus the education allowance;

b. for students enrolled at regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities, the average tuition and mandatory fees for full time students at the four year public postsecondary institutions, plus the education allowance.

Louisiana Resident—

a. A dependent or independent student whose true, fixed, and permanent home of residence is Louisiana as reported on the Free Application for Federal Student Aid (FAFSA).

b. A dependent student whose non-custodial parent completes a residency affidavit in Subparagraph e below that establishes Louisiana residency.

c. A dependent student whose parent is transferred out of Louisiana temporarily by his/her employer and that parent completes a residency affidavit in Subparagraph e below that establishes Louisiana residency.

d. A dependent student whose parent is on active duty in the Armed Forces and who is stationed in Louisiana under permanent change of station orders, or an independent student who is on active duty military status in the Armed Forces and is stationed in Louisiana under permanent change of station orders.

e. If the dependent or independent student does not report Louisiana as his true, fixed, and permanent home of residence as Louisiana on the FAFSA, the administering agency may require an independent student applicant or the parent of a dependent student applicant to show proof of residency. Residency may be established by completion of a standard affidavit developed by the administering agency. Such affidavits must be completed in their entirety by the independent student applicant or by at least one parent of the dependent student applicant and be sworn to and notarized by a licensed notary public. Further, the affiant shall be required to submit records in support of the affidavit to include the following records and such other records as may be required by the administering agency:

- i. if registered to vote, a Louisiana voter registration card; and
- ii. if licensed to drive a motor vehicle, a Louisiana driver's license; and
- iii. if owning a motor vehicle located in Louisiana, a Louisiana registration for that vehicle; and
- iv. if earning a reportable income, a Louisiana tax return.

Over Award—an over award occurs when a student receives financial aid in excess of the cost of attendance or an award under state programs to which the student was not entitled.

Postsecondary Institution—Louisiana public colleges or universities and regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities and a Louisiana public college that has been granted regional candidacy status, but is not yet eligible to participate in Title IV programs, may award students a Go Grant. Candidacy status institutions must require students to complete a FAFSA and the institution must determine a student's eligibility in accordance with rules under this Chapter.

Program Full-Time—a student is enrolled in a degree program at a postsecondary institution that the institution defines full-time as less than 12 hours per semester or eight hours per term.

Satisfactory Academic Progress—a standard established in accordance with the Higher Education Act of 1965, as amended, by the institution at which a GO Grant recipient is enrolled for measuring a student's progress in his or her educational program.

Undergraduate Program—a program of study that is designed to lead to a certificate or undergraduate degree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1205. Application and Initial Eligibility

A. Application. A student must complete the Free Application for Federal Student Aid for the year during which he intends to enroll in college.

B. Initial Eligibility. In order to be eligible for a Louisiana GO Grant, a student must:

- 1. be a Louisiana resident; and
- 2. receive a federal Pell grant or a financial need grant; and
- 3. have an Education Cost Gap (ECG) greater than \$0; and
- 4.a. be a student who entered college as a first time freshman during academic year 2007-2008 or later; or
 - b. be a student who is age 24 or younger who entered college as a first time freshman during academic year 2007-2008 or later; or
 - c. be a student who is age 25 or older and who has had a break in enrollment of at least two consecutive semesters, not including a summer semester or term, immediately preceding the period of enrollment for which the student is being considered for receipt of a grant under this Chapter;
- 5. not have a criminal conviction, except for misdemeanor traffic violations.

C. In order to receive a grant under this Chapter, an eligible student must be enrolled in an undergraduate program at a postsecondary institution through the 14th class day (9th class day at quarter and term schools).

§1207. Continuing Eligibility

A. Application. A student must complete the Free Application for Federal Student Aid or the Renewal Application for each year he enrolls in college to be considered for a Pell grant and the Go Grant.

B. A student's eligibility will be reevaluated on the same schedule as eligibility for a federal Pell grant or a financial need grant is determined at the institution, but at least once annually.

1. The student must continue to receive the federal Pell grant or a financial need grant.

2. The student must still have an education cost gap greater than \$0 as determined using the ECG formula.

3. The student must have maintained satisfactory academic progress as defined by the institution in which he is enrolled in accordance with the Higher Education Act of 1965.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1209. Eligibility of Postsecondary Institutions

A. Postsecondary Institutions Eligible to Participate

1. Postsecondary institutions that provide undergraduate programs.

2. Regionally accredited private colleges and universities that are members of the Louisiana Association of Independent Colleges and Universities, Inc. (LAICU). As of July 2007, LAICU membership included Centenary College, Dillard University, Louisiana College, Loyola University, New Orleans Baptist Theological Seminary, Our Lady of the Lake College, Our Lady of Holy Cross College, St. Joseph Seminary College, Tulane Medical Center, Tulane University and Xavier University.

B. Audits

1. Postsecondary institutions that participate in the Louisiana GO Grant program grant LOSFA and the Louisiana legislative auditor the right to inspect records and perform on-site audits of each institution's administration of the program for the purpose of determining the institution's compliance with state law and applicable rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1211. Responsibilities of Postsecondary Institutions

A. Initial Eligibility

1.a. Postsecondary institutions must determine whether the student meets the criterion in Subparagraph a of the definition of Louisiana resident in §1203.

b. If this criterion is not met, the student may request that LOSFA make a determination of residency under Subparagraph e of the definition of Louisiana resident in §1203.

2. Postsecondary institutions must determine whether a student meets the initial eligibility criteria enumerated in §1205.B.2-4.

B. Continuing Eligibility

1. Postsecondary institutions must determine whether a student meets the continuing eligibility criteria enumerated in §1207 on the same schedule as eligibility for a Pell grant or a financial need grant is determined at the institution, but at least once annually.

C. Submission of Payment Requests. Each semester or term, postsecondary institutions shall submit a payment request to LOSFA for students enrolled at the institution who have been determined eligible for a Louisiana GO Grant as follows.

1. For each student eligible for a Louisiana GO Grant who is enrolled at the end of the 14th class day for semester schools, or the 9th class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session.

2. Payment Request Amount

a. \$1,000 per semester for a student enrolled full time after the 14th class day in a postsecondary institution that operates on a semester basis or \$667 (\$666 for the final term of the award year) per term for a student enrolled full time after the 9th class day in a postsecondary institution that operates on a term basis;

b. \$500 per semester for a student enrolled half time after the 14th class day in a postsecondary institution that operates on a semester basis or \$333 (\$334 for the final term) per term for a student enrolled half time after the 9th class day in a postsecondary institution that operates on a term basis;

c. \$250 per semester for a student enrolled less than half time after the 14th class day in a postsecondary institution that operates on a semester basis or \$167 (or \$166 for the final term) per term for a student enrolled half time after the 9th class day in a postsecondary institution that operates on a term basis.

d. For summer sessions, the difference between what the student was paid during the preceding fall semester or term, winter term, if applicable, and spring semester or term and the student's maximum annual award amount; provided the award for the summer session shall not exceed \$1,000.

3. The payment request shall include the social security number, college code, term, date, hours attempted, award amount, education cost gap and amount requested for each student.

4. For students who are enrolled in more than one postsecondary institution, the home school (school paying the Pell grant or a financial need grant) is responsible for submitting a payment request for the Go Grant based on the total hours enrolled at all institutions.

D. Over Payments

1. No institution shall submit a payment request for GO Grant funds which would result in a student receiving an annual total of more than is authorized in §1201.C.

2. Postsecondary Institutions certify by submitting a payment request for a GO Grant that the institution will reimburse LOSFA for any award funds that are disbursed to

ineligible students, in excess of the maximum annual award or in excess of the maximum lifetime award.

E. Over Award

1. In the event the student's total aid, including vocational rehabilitation awards, exceeds the cost of attendance, any federal loan aid included in the total aid package shall be reduced, then institutional and other aid in accordance with institutional practice, then the Louisiana GO Grant, then a TOPS Award, if applicable, shall be reduced by the amount of any remaining over award.

F. Records Retention.

1. Records pertaining to the payment requests for Louisiana GO Grants are subject to audit as required by LASFAC, the Louisiana Board of Regents, and the Louisiana Legislative Auditor. Postsecondary institutions shall maintain all records for a minimum of three years from creation. All such records shall be made available upon request by LASFAC, the Louisiana Board of Regents and/or the Louisiana Legislative Auditor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1213. Responsibilities of LOSFA

A. LOSFA shall pay each postsecondary institution an amount equal to that amount in a payment request by the postsecondary institution in accordance with the provisions of §1211.C.

B. LOSFA shall determine the residency of students who do not meet the criteria enumerated in Subparagraph a of the definition of *Louisiana resident* in §1203 and notify postsecondary institutions of its determination(s).

C. LOSFA shall maintain a database of all students who have received the GO Grant, including social security number, college code, term, date, hours attempted, award amount, education cost gap amount, annual amount received, and aggregate amount received. In the event LOSFA receives a payment request for a student in an amount that would exceed the student's eligibility, LOSFA will pay only that amount that will not exceed the student's eligibility.

D. Adequacy of Funding

1. After the receipt of fall semester or term payment requests, but no later than October 15 of each year, LOSFA shall determine whether sufficient funds are available to pay all anticipated awards for subsequent semesters, terms and sessions of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. In the event additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

E. LOSFA shall audit postsecondary institutions to ensure compliance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

§1215. Responsibilities of LASFAC

A. LASFAC shall promulgate administrative rules in accordance with the Administrative Procedure Act, in consultation with the Louisiana Board of Regents and in accordance with a memorandum of understanding entered into by and between LASFAC and the Louisiana Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:

George Badge Eldredge
General Counsel

0708#013

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of Aging and Adult Services**

Home and Community Based Services Waivers
Adult Day Health Care
(LAC 50:XXI.Chapters 21, 23, and 27)

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to amend LAC 50:XXI.2101, 2103, 2107, 2109, 2313 and Chapter 27, and to adopt §2317 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 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, Office of the Secretary, Bureau of Health Services Financing repromulgated the provisions governing home and community-based waiver services for adult day health care (*Louisiana Register*, Volume 30, Number 9). The Department of Health and Hospitals, Office of Aging and Adult Services subsequently amended the September 20, 2004 Rule to: 1) clarify procedures for the allocation of ADHC waiver opportunities; 2) amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and 3) eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L) (*Louisiana Register*, Volume 32, Number 12). The department promulgated an Emergency Rule to amend the September 20, 2004 Rule to: 1) redefine the target population; 2) establish provisions governing placement on the request for services registry; 3) clarify the comprehensive plan of care requirements; and 4) establish provider reporting requirements and admission and discharge criteria for the ADHC Waiver (*Louisiana Register*, Volume 33, Number 3). The department amended the provisions contained in the March 20, 2007 Emergency Rule to more precisely define the target population, establish explicit provisions governing placement on the request for services registry and admission and discharge criteria for the ADHC Waiver (*Louisiana*

Register, Volume 33, Number 5). This Emergency Rule is being promulgated to further clarify the provisions of the May 20, 2007 Emergency Rule.

This action is being taken to avoid federal sanctions which may result from not having provisions to clearly define the ADHC target population and admission and discharge criteria. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2007-2008.

Effective August 20, 2007, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions of the September 20, 2004 Rule and the May 20, 2007 Emergency Rule governing the Adult Day Health Care Waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 3. Adult Day Health Care

Chapter 21. General Provisions

§2101. Introduction

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

§2103. Program Description

A. The Adult Day Health Care (ADHC) Waiver Program expands the array of services available to functionally-impaired individuals and helps bridge the gap between independence and institutional care by allowing them to remain in their own homes and communities. This program provides direct care for five or more hours in a 24-hour weekday to individuals who are physically and/or mentally impaired.

B. The target population for the ADHC Waiver Program includes individuals who:

- 1. are 65 years old or older; or
- 2. 22 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria; and
- 3. meet nursing facility level of care requirements.

C. The long-range goal for all adult day health care participants is the delay or prevention of long-term care facility placement. The more immediate goals of the Adult Day Health Care Waiver are to:

- 1. promote the individual's maximum level of independence;
- 2. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;

3. restore and rehabilitate the individual to the highest possible level of functioning;
4. provide support and education for families and other caregivers;
5. foster socialization and peer interaction; and
6. serve as an integral part of the community services network and the long-term care continuum of services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

§2107. Request for Services Registry

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Adult Day Health Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the ADHC Waiver registry shall be screened to determine whether they meet nursing facility level of care. Only individuals who meet this criterion will be added to the registry.

C. - D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 33:

§2109. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult Day Health Care Waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those individuals who have indicated that they are at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or
- c. has a primary caregiver who has a disability or is age 70 or older.

C. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

D. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

Chapter 23. Provider Participation **§2313. Comprehensive Plan of Care (CPOC)**

A. ...

B. Reimbursement shall not be made for ADHC Waiver services provided prior to the department's approval of the CPOC. Comprehensive plans of care must be completed and submitted timely in accordance with DHH policy and procedures.

C. The ADHC provider shall complete a CPOC which shall contain the type and number of services, including waiver and all other services, necessary to maintain the waiver recipient safely in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

§2317. Reporting Requirements

A. ADHC facilities are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. ADHC facilities are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

Chapter 27. Admission and Discharge Criteria

§2701. Admission Criteria

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;
2. initial and continued eligibility for a nursing facility level of care;
3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual;
4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §2701.A. above will result in denial of admission to the ADHC Waiver.

C. - 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, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

§2703. Denial or Discharge Criteria

A. Admission shall be denied or the recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.
2. The individual does not meet the criteria for a nursing facility level of care.
3. The recipient resides in another state or has a change of residence to another state.
4. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver services during a period of 30 consecutive days.
5. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.
6. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.
7. It is not cost effective to serve the individual in the ADHC Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#082

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of Aging and Adult Services**

Home and Community Based Services Waivers
Elderly and Disabled Adult Waiver
(LAC 50:XXI.Chapters 81 and 85)

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to amend LAC 50:XXI.Chapters 81 and 85 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 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 governing home and

community-based waiver services for elderly and disabled adults in LAC 50:XXI.Chapters 81-89 (*Louisiana Register*, Volume 30, Number 8). The Division of Long Term Supports and Services amended the provisions governing the Elderly and Disabled Adult (EDA) Waiver to: 1) eliminate the duplication of like services currently provided in the waiver and as a Medicaid State Plan service; 2) define the existing service package and establish new services; and 3) revise the methodology for allocation of waiver opportunities (*Louisiana Register*, Volume 32, Number 7). The Department promulgated an Emergency Rule to amend the August 20, 2004 Rule to establish provisions governing placement on the request for services registry (*Louisiana Register*, Volume 33, Number 3). The department promulgated an Emergency Rule to amend the August 20, 2004 Rule to further clarify the provisions governing the EDA Waiver, including the provisions governing placement on the request for services registry, allocation of waiver opportunities and admission and discharge criteria (*Louisiana Register*, Volume 33, Number 5). This Emergency Rule is being promulgated to amend the August 20, 2006 Rule to further clarify the provisions of the May 20, 2007 Emergency Rule.

This action is being taken to promote the well-being of Louisiana citizens by facilitating access to home and community-based services through the adoption of clear and precise provisions for the EDA Waiver request for services registry and the allocation of waiver opportunities. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2007-2008.

Effective August 20, 2007, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions of the August 20, 2004 Rule and the May 20, 2007 Emergency Rule governing the Elderly and Disabled Adult Waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waiver

Subpart 7. Elderly and Disabled Adults Waiver

Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Elderly and Disabled Adult (EDA) Waiver Program includes individuals who:

1. are 65 years old or older; or
2. 21 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria; and
3. meet nursing facility level of care requirements.

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 Community Supports and Services, LR 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Elderly and Disabled

Adult Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the EDA Waiver registry shall be screened to determine whether they meet nursing facility level of care. Only individuals who meet this criterion will be added to the registry.

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 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

§8105. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new EDA Waiver opportunity or an existing opportunity is vacated, the Department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible EDA Waiver opportunity assignment.

B. EDA Waiver opportunities are offered based on the date of first request for services, with priority given to individuals who are in a nursing facility, but could return to their home if EDA Waiver services are provided. Priority shall also be given to those individuals who have indicated that they are at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

a. is likely to require admission to a nursing facility within the next 120 days;

b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided in within 120 days; or

c. has a primary caregiver who has a disability or is age 70 or older.

C. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

D. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

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 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

Chapter 85. Admission and Discharge Criteria

§8501. Admission Criteria

A. - A.3. ...

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §8501.A. will result in denial of admission to the EDA Waiver.

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 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

§8503. Denial or Discharge Criteria

A. Admission shall be denied or the recipient shall be discharged from the EDA Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.

2. The individual does not meet the criteria for a nursing facility level of care.

3. The recipient resides in another state or has a change of residence to another state.

4. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing EDA Waiver services during a period of 30 consecutive days.

5. The health, safety and welfare of the individual cannot be assured through the provision of EDA Waiver services within the individual's cost effectiveness.

6. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

7. Failure on behalf of the individual to maintain a safe and legal home environment.

8. It is not cost effective to serve the individual in the EDA Waiver.

9. - 10. 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 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#088

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Medical Transportation Program
Emergency and Non-Emergency Ambulance Services
Reimbursement Rate Increase
LAC 50:XXVII.Chapters 3-5)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXVII.Chapters 3-5 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 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, Office of the Secretary, Bureau of Health Services Financing provides reimbursement for emergency and non-emergency ambulance services. Reimbursement for these services is the base rate established by the bureau minus the amount which any third party coverage would pay. As a result of the allocation of additional funds by the Legislature during the 2002 and 2006 Regular Sessions, the bureau increased the reimbursement rate for certain designated procedure codes for non-emergency ambulance transportation services (*Louisiana Register*, Volume 28, Number 12) and increased the base rate and ground mileage reimbursement rate for emergency ambulance transportation services (*Louisiana Register*, Volume 33, Number 3).

Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to increase the ground mileage rate and ancillary services rate for emergency and non-emergency ambulance transportation services. In compliance with the directives of Act 18, the department now proposes to amend the reimbursement methodology for emergency and non-emergency ambulance transportation services to increase the ground mileage rate and the ancillary services rate. This action is being taken to promote the health and welfare of recipients and to maintain access to emergency ambulance transportation services by encouraging the continued participation of these providers in the Medicaid Program. It is estimated that the implementation of this Emergency Rule will increase expenditures in the Medical Transportation Program by approximately \$4,362,674 for state fiscal year 2007-2008.

Effective September 1, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates for

emergency and non-emergency ambulance transportation services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§325. Reimbursement

A. The Medicaid reimbursement for land-based ambulance services is the rate established in the State fee schedule (based on Medicare rates) for emergency ambulance transport, basic life support, advanced life support and mileage, oxygen, intravenous fluids, and disposable supplies administered during the emergency ambulance transport minus the amount paid by any liable third party coverage.

B. For dates of service on or after September 1, 2006, the base rate for emergency ambulance transportation services shall be increased by 5 percent of the rates in effect on August 31, 2006.

C. For dates of service on or after September 1, 2006, the ground mileage reimbursement rate for emergency ambulance transportation services shall be increased by 17 percent of the rates in effect on August 31, 2006.

D. For dates of service on or after September 1, 2007, the ground mileage reimbursement rate for emergency ambulance transportation services shall be increased by \$2.50 of the rate in effect on August 31, 2007.

E. For dates of service on or after September 1, 2007, the ancillary services rate for emergency ambulance transportation services shall be increased by 70 percent of the rate in effect on August 31, 2007.

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:

Chapter 5. Non-Emergency Medical Transportation

Subchapter D. Reimbursement

§571. Non-Emergency Ambulance Transportation

A. Reimbursement for non-emergency ambulance transportation claims shall be allowed only when accompanied by the medical certification form justifying the need for ambulance services.

B. For dates of service on or after September 1, 2007, the ground mileage reimbursement rate for non-emergency ambulance transportation services shall be increased by \$2.50 of the rate in effect on August 31, 2007.

C. For dates of service on or after September 1, 2007, the ancillary services rate for non-emergency ambulance transportation services shall be increased by 70 percent of the rate in effect on August 31, 2007.

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:

§573. Non-Emergency, Non-Ambulance Transportation

A. For dates of service on or after September 1, 2006, the reimbursement rate for non-emergency, non-ambulance medical transportation services shall be increased by 5 percent of the rates in effect on August 31, 2006.

B. For dates of service on or after December 1, 2006, the reimbursement rate for non-emergency, non-ambulance medical transportation services shall be increased by an additional 9 percent of the rates in effect on November 30, 2006.

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:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#089

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

State Children's Health Insurance Program
Coverage of Prenatal Care Services
(LAC 50:III.20101-20105)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:III.20101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This Emergency Rule is promulgated in accordance with 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, Office of the Secretary, Bureau of Health Services Financing implemented a Medicaid expansion program under the provisions of Title XXI of the Social Security Act called the Louisiana Children's Health Insurance Program (LaCHIP) (*Louisiana Register*, Volume 24, Number 10). LaCHIP provided health care coverage to uninsured children up to age 19 with family income below 133 percent of the federal poverty level (FPL). The October 20, 1998 Rule was subsequently amended to: 1) implement the second phase of LaCHIP which expanded coverage to uninsured children with family income up to 150 percent of the FPL (*Louisiana Register*, Volume 25, Number 9); and 2) implement the third phase which expanded coverage to uninsured children with family income up to 200 percent of the FPL (*Louisiana Register*, Volume 26, Number 12).

The bureau by Emergency Rule expanded coverage to children under Title XXI of the Social Security Act by implementing a stand-alone State Children's Health

Insurance Program (SCHIP) to provide coverage of prenatal care services to low income, non-citizen women (*Louisiana Register*, Volume 33, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 1, 2007 Emergency Rule. This action is being taken to promote the health and well-being of children by increasing access to prenatal care services in order to reduce the occurrence of premature deliveries and costly emergency care for drop-in deliveries.

Effective August 30, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions to establish State Children's Health Insurance Program coverage of prenatal care services as an expansion of coverage for children under the provisions of Title XXI of the Social Security Act.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 11. State Children's Health Insurance Program Chapter 201. Prenatal Care Services

§20101. General Provisions

A. Effective May 1, 2007, the Department of Health and Hospitals will provide State Children's Health Insurance Program (SCHIP) coverage of prenatal care services to low income, non-citizen women as an expansion of coverage for children under Title XXI of the Social Security Act. SCHIP coverage of prenatal care services will be an expansion of coverage for children, from conception to birth, with income from 0 percent through 200 percent of the federal poverty level (FPL).

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

§20103. Eligibility Criteria

A. An applicant must be a Louisiana resident and cannot be eligible for Medicaid benefits under the provisions of Title XIX of the Social Security Act.

B. Applicants must be uninsured at the time of application.

1. Applicants are considered to be uninsured if they do not have creditable health insurance that provides coverage of prenatal care services.

C. Recipients must have family income at or below 200 percent of the FPL.

D. Recipients cannot be covered under a group health insurance plan or have creditable health insurance coverage and cannot have access to a state employee health benefits plan.

1. A state employee health benefits plan is a plan that is offered or organized by the state government, or on behalf of state employees, or other public agency for employees within the state.

E. Recipients shall be eligible to receive SCHIP coverage of prenatal care services from the month of conception or the first month of eligibility following conception, whichever is later, through the month of birth.

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

§20105. Services

A. Covered Services. Recipients shall receive coverage of pregnancy-related health care services and associated medically necessary services for conditions that, if not treated, would complicate the pregnancy. Pregnancy-related health care services which may be covered include:

1. inpatient and outpatient health care services;
2. physician services;
3. surgical services;
4. clinic and other ambulatory health care services;
5. prescription and over-the-counter medications;
6. laboratory and radiological services;
7. pre-natal care and pre-pregnancy family services and supplies;
8. inpatient and outpatient mental health services other than those services relative to substance abuse treatment;
9. durable medical equipment and other medically-related or remedial devices;
10. disposable medical supplies;
11. nursing care services;
12. extended dental services for pregnant women;
13. case management services;
14. physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders;
15. medical transportation services; and
16. any other medically necessary medical, diagnostic, screening, preventive, restorative, remedial, therapeutic or rehabilitative services.

B. Service Limits. Sterilization procedures are not a covered service in this program. Other Medicaid-specific benefit limits, age limits and prior authorization requirements may be applicable to the services covered in this program.

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

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#086

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers
Children's Choice—Service Cap Increase
(LAC 50:XXI.11301)**

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.11301 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with 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, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the rules governing the Children's Choice Waiver under the Louisiana Administrative Code (*Louisiana Register*, Volume 28, Number 9). The Children's Choice Waiver provides services with greater flexibility which is appropriate to families who care for children with disabilities. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities by Emergency Rule amended the provisions governing the Children's Choice Waiver to increase the service cap (*Louisiana Register*, Volume 33, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2007 Emergency Rule. This action is being taken to promote the health and safety of waiver recipients by assuring that they receive adequate services and supports.

Effective September 18, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the Children's Choice Waiver to increase the service cap.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based
Services Waivers
Subpart 9. Children's Choice**

Chapter 113. Service

§11301. Service Cap

A. Children's Choice services are capped at \$17,000 per individual per plan of care year.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#084

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers New Opportunities Waiver—Direct Support Professionals Wage Enhancement (LAC 50:XXI.14101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14101 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 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, Office of the Secretary, Bureau of Community Supports and Services implemented a new home and community based services waiver, the New Opportunities Waiver (NOW), designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions of the June 20, 2004 Rule governing the reimbursement methodology for the New Opportunities Waiver to implement a wage pass-through payment for direct support professionals who provide Individual and Family Support Services to NOW recipients (*Louisiana Register*, Volume 33, Number 2). The department by Emergency Rule amended the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through, hereafter referred to as a wage enhancement, payment for direct support professionals who provide Day Habilitation, Supported Employment, Employment-Related Training and Center-Based Respite services to NOW recipients (*Louisiana Register*, Volume 33, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2007 Emergency Rule. This action

is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services.

Effective September 18, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions of the February 9, 2007 Emergency Rule governing the reimbursement methodology for the New Opportunities Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 11. New Opportunities Waiver

Chapter 141. Reimbursement

§14101. Reimbursement Methodology

A. - E.1. ...

F. Direct Support Professionals Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Individual and Family Support Services to New Opportunities Waiver recipients.

2. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to New Opportunities Waiver recipients:

- a. Day Habilitation;
- b. Supported Employment;
- c. Employment-Related Training; and
- d. Center-Based Respite.

3. At least 75 percent of the wage enhancement shall be paid to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

4. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

5. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

6. A separate report shall be submitted for paid overtime.

7. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

8. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

9. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

10. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of 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:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#085

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Development Disabilities

Home and Community-Based Services Waivers Supports Waiver—Direct Support Professionals Wage Enhancement (LAC 50:XXI.6101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapter 61 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 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, Office of the Secretary, Office for Citizens with Developmental Disabilities implemented a home and community-based services waiver, the Supports Waiver, to promote the independence of individuals with developmental disabilities by creating vocational and community inclusion options to enhance their lives (*Louisiana Register*, Volume 32, Number 9). This department by Emergency Rule amended the provisions of the September 20, 2006 Rule governing the reimbursement methodology for the Supports Waiver to implement a wage enhancement payment to providers for

direct support professionals (*Louisiana Register*, Volume 33, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2007 Emergency Rule. This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services.

Effective September 18, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the reimbursement methodology for the Supports Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement

§6101. Reimbursement Methodology

A. - H. ...

I. Direct Support Professionals Wage Enhancement

1. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to Support Waiver recipients:

- a. Habilitation;
- b. Supported Employment;
- c. Day Habilitation;
- d. Center-Based Respite; and
- d. Prevocational Services.

2. At least 75 percent of the wage enhancement shall be paid to the direct support professional as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

3. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

4. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending March 31, 2007. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

5. A separate report shall be submitted for paid overtime.

6. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

7. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

8. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

9. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment from the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#087

DECLARATION OF EMERGENCY

Department of Social Services Office of Community Services

Allocation of Hurricane Relief Funds Supplemental Appropriation (LAC 67:V.717)

The Department of Social Services (DSS), Office of Community Services (OCS), has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:V.Section 717, Allocation of Hurricane Relief Funds Supplemental Appropriation effective July 21, 2007. This action is necessary to extend the original Emergency Rule that was effective March 23, 2007, but will expire before the final Rule is published. Additionally, DSS/OCS will enter into agreements with the Governor's Office of Elderly Affairs to provide necessary services to Louisiana's senior citizens and the Orleans Metro Housing (local non-profit) to assist hurricane-affected clients in Orleans Parish, in locating suitable affordable housing in Orleans Parish. This Emergency Rule shall remain in effect for 120 days or until the publication of the final Rule in November 2007, whichever comes first.

Under the Department of Defense Appropriations Act (H.R. 2863), \$220,901,534 has been allocated to Louisiana in a supplemental appropriation to Social Service Block Grant funds for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico in calendar year 2005. In addition to other uses permitted by Title XX of the Social Security Act, funds appropriated under this heading may be used for health services, including mental health services, and for repair, renovation and construction of health facilities, including mental health facilities. It recognizes that the hurricanes in the Gulf of Mexico in calendar year 2005 have imposed extreme

demands for social and health care services in affected states. States may use SSBG funds for a wide array of human services. The Administration for Children and Families, (ACF) approved a waiver of the provisions under Section 2005 (a) of the Social Security Act on June 2, 2006 to allow the use of SSBG Supplemental funds for the rebuilding and construction of childcare facilities in Louisiana.

The Office of Community Services proposes to enter into contracts, memoranda of understanding, or other agreements with the entities listed in this rule including but not limited to such services as health services, including mental health services, for repair, renovation, and construction of facilities, including Class A child care facilities and mental health facilities, intensive benefits, and case management for the citizens of this state effected by the hurricanes.

Emergency action is necessary due to imminent peril to public health as the hurricanes in the Gulf of Mexico in calendar year 2005 have imposed extreme demands for social and health care services. SSBG funds may be used for a wide array of human services and the supplemental appropriation must be expended by September 30, 2009.

Two public hearings were held in accordance with SSBG rules and no comments were received.

Title 67

SOCIAL SERVICES

Part V. Office of Community Services

Chapter 7. Social Services Block Grant

§717. Allocation of Hurricane Relief Funds SSBG Supplemental Appropriation

A. Purpose, Need, and Eligibility

1. Under the Department of Defense Appropriations Act (H.R. 2863), \$220,901,534 has been allocated to Louisiana in a supplemental appropriation to Social Service Block Grant (SSBG) funds for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico in calendar year 2005. In addition to other uses permitted by Title XX of the Social Security Act, funds appropriated under this heading may be used for health services, including mental health services, and for repair, renovation and construction of facilities, including mental health facilities. The Administration for Children and Families, (ACF) approved a waiver of the provisions under Section 2005 (a) of the Social Security Act on June 2, 2006 to allow the use of SSBG Supplemental funds for the rebuilding and construction of childcare facilities in Louisiana.

2. The Office of Community Services (OCS) proposes to enter into contracts, memoranda of understanding, or other agreements with the entities listed in this rule including but not limited to such services as health services, including mental health services, for repair, renovation, and construction of facilities, including Class A child care facilities and mental health facilities, intensive benefits, and case management for the citizens of this state effected by the hurricanes. This Rule is effective for the SSBG allotment of federal fiscal year 2006.

3. It recognizes that the hurricanes in the Gulf of Mexico in calendar year 2005 have imposed extreme demands for social and health care services in affected states. States may use SSBG funds for a wide array of human services.

4. Because of the nature of the natural disaster, many affected individuals and families will not have in their possession customary documentation of their economic status to substantiate eligibility for SSBG supported services. Also, many individuals or families who may not have been eligible for assistance prior to the hurricanes may be, because of the devastation, eligible now. Therefore, "presumptive eligibility" determinations may be made based on applicant residence in known areas of devastation at the time of hurricane Katrina (H Katrina) or hurricane Rita (H Rita) or post-hurricane experience of affected individuals or families. Each entity that receives the SSBG funding can have additional or different eligibility requirements.

5. The following areas to be addressed include:

a. the health care needs of people affected by the hurricanes in the Gulf of Mexico in calendar year 2005 and who lack health insurance or other adequate access to care and to help health care create a 'safety net.' This would include intended uses of these funds in areas of mental health service provision and provision for substance and addictive disorder interventions and services;

b. expanding services to meet the needs of families in the child welfare system in the areas of foster care, adoption, prevention, intervention, and protective services in child welfare;

c. institutions serving these populations in order to build community health centers, rural hospitals and clinics, community mental health centers, public hospitals, and other providers with substantial percentages of uninsured patients. Funds may be made available for repairs and reconstruction needed to allow health centers and similar providers to resume or expand operations, or to help key providers meet salary and other costs associated with resuming or restoring health services;

d. providing social service delivery and case management services to families in order to assist with identification of housing needs, development of individualized recovery plans and referral of families to available disaster relief services, provide for case management and follow-up with families, and to provide for direct emergency assistance in human services;

e. restoring critical child care services will support families as they return to work in hurricane affected parishes. Child care supports are vital to reestablishing a workforce and strengthening our state's economy. Child care is a critical need to promote independence and safety of families and children. Restoring the child care infrastructure is a current need in Louisiana. Funds will be available to rebuild the child care infrastructure by repairing and/or building Class A child care centers and providing training and technical assistance necessary in attracting and retaining a child care workforce.

B. Department of Social Services

1. Child Welfare Services—Foster Care, Adoption, Prevention, Intervention and Protective Services. Services will include anger management, parenting skills, counseling, etc. Visitation expenses include travel for the foster child and foster parent/caretaker from their displaced location to the birthparent's location, lodging, and meals during the travel. This includes travel both within and outside of Louisiana. It is estimated that 2/3 of impacted children lost at least a significant portion or all of their personal belongings that

have yet to be replaced. These were possessions lost or damaged during the time during and after H Katrina or H Rita. These funds will be used in this arena. These funds will be used to provide for the youth effected by H Katrina or H Rita in OCS independence programs. These are programs used to assist children aging out of foster care custody and who have greater needs for transitional assistance than is typically provided, especially in the aftermath of the upheaval and displacement brought on by the storms of 2005. These funds will be used for foster care reunification services, as additional demands for such services are felt as a result and impact on the child welfare system of services due to H Katrina and H Rita. After most disasters, there is an evidenced increase in abuse and/or neglect as well as disruptions in foster care. Such funds will be used to obtain trauma-related services to help stabilize placements and prevent disruptions by providing increased service access for family services, respite care, counseling, parenting classes, etc.

2. Child Care Services. Louisiana must rebuild the child care infrastructure in the hurricane affected parishes to assist families in returning to work while ensuring their children receive quality child care. To meet the critical need for child care in Louisiana, DSS/OFS will implement a child care support system to rebuild the child care sector. This will be done by three initiatives.

a. Training and Technical Assistance for Child Care Providers. The objective of this program is to provide intensive training and technical assistance for current and prospective child care providers to increase the supply of child care businesses opening and reopening in the hurricane affected areas. Training and technical assistance will also be provided to current and prospective child care providers and other professionals engaged in the system. The services will be available in Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington Parishes.

b. Furnishing Child Care Centers Program. This component will offer a program for equipping, furnishing, and supplying Class A Child Care centers whose licenses were suspended due to hurricane-related damage and have reopened, Class A centers in the process of opening or reopening, or Class A centers being constructed. An assessment of each center will be conducted and a priority for equipping Class A child care centers will be established. Furnishings, equipment and supplies include but are not limited to curriculum, books, furniture, appliances, office equipment, developmentally and age appropriate play equipment for both indoor and outdoor space and other items appropriate to the operation of a Class A licensed day care center.

i. Eligibility will be limited to the Class A child care centers that are currently participating in the Child Care Assistance Program (CCAP) funding; those reopening, that participated in the CCAP within a year prior to August 2005; or for those new Class A child care centers that have opened since August 29, 2005, and are committing to serve CCAP eligible children within 60 days of opening for business.

ii. The program will be offered in Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington parishes.

iii. Eligible expenses dated October 1, 2005 or after will be reimbursable. Eligible reimbursable expenses are those not covered by other reimbursements, such as insurance and other state or federal funds.

iv. Class A child care centers participating in this program must agree to accept all requirements as defined by SSBG and the state, including federal and state interest.

c. Child Care Facilities Restoration Fund: This program will provide funds for repair and/or construction of Class A child care centers in hurricane devastated parishes Calcasieu, Cameron, Orleans, Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington. The state must apply its appropriate administrative standards when issuing sub awards to guarantee the protection and disposition of real estate rebuilt, constructed or purchased with grant funds and the state is also required to file a Notice of Federal Interest document to officially recognize the Federal Government's continuing financial interest in the property. The minimum eligibility criteria for the Child Care Facilities will include the following:

i. previously held Class A license or agree to become a Class A licensed facility and agree to maintain a Class A license;

ii. for Class A centers that previously held a Class A license, have served children subsidized with CCAP funds within 12 months prior to August 2005 and commit to doing so moving forward, and provide assurance that SSBG funding along with any other identified funding will allow the center to reopen and serve children;

iii. for an entity wishing to open a new Class A child care center, must declare intention to serve children subsidized with CCAP funding and provide assurance that SSBG funding along with any other identified funding will allow the center to reopen and serve children;

iv. must provide evidence of current demand for services;

v. must provide evidence of capacity to provide quality child care services;

vi. must agree to accept all requirements as defined by SSBG and the state including federal and state interest;

vii. eligible expenses dated October 1, 2005 or after will be reimbursable. Eligible reimbursable expenses are those not covered by other reimbursements, such as insurance and other state or federal funds.

C. Department of Health and Hospitals

1. Behavioral Health Services

a. Funds shall be used to restore and expand mental health services, substance abuse treatment and prevention services and developmental disability services as follows:

i. immediate intervention—crisis response system;

ii. substance abuse treatment and prevention;

iii. behavioral health services for children and adolescents;

iv. preventing or reducing inappropriate institutional care;

v. behavioral health program restoration and resumption;

vii. health care work force; and

vii. operational tools

2. Preventive and Primary Care. Funds shall be used to issue grant awards to parishes as bridge funding to restore and develop comprehensive and integrated primary, preventive and behavioral health care services, with an emphasis on restoring safety net services for the uninsured and underinsured.

D. Louisiana State University Health Sciences Center (LSU-HSC)

1. Funds Allocated to LSU. HSC would be used as follows:

a. keep the healthcare workforce intact by retaining faculty and residents;

b. set up primary care clinics across the city with funding for salaries for dentists, physicians, nurses and allied health personnel;

c. expand capabilities to address psychiatric needs in New Orleans and surrounding areas;

d. support the general dentistry residency, oral and maxillofacial surgery residency, and oral medicine programs that provide preventive and primary care to the uninsured at multiple sites in the state;

e. prepare an adequate number of allied health professionals who can function in primary, secondary, and tertiary care through the School of Allied Health Professions. The LSUHSC-New Orleans is a primary source of graduate level practitioners in the areas of Physical Therapy, Occupational Therapy, Speech and Language Pathology, Audiology, Medical Technology, Cardiopulmonary Technology, and Rehabilitation Counseling for New Orleans and the state of Louisiana;

f. resume Early Intervention Institute and the Human Development Center direct service, consultative, and advocacy programs for individuals with disabilities. Reestablishing these services will ensure maintenance of high-quality health care educational experiences for individuals who work with these citizens who represent a portion of our population that is typically uninsured, underserved, and at the greatest risk for developing physical and mental problems.

E. LSU Health Care Services Division (HCSO)

1. Funding to the HCSO in the current fiscal year will enable the division to continue providing the following services:

a. the enhancement of primary care services at the regional hospitals to accommodate the population shifts which have occurred;

b. the patient pharmaceutical procurement program which matches needy patients with low cost medications that are essential to proper management of such conditions as diabetes, hypertension, asthma, HIV and asthma which have the effect of preventing further and or rapid development of the disease;

c. provide needed financing for eight neighborhood health units currently under development for placement in New Orleans;

d. continued funding of the EMED currently at the New Orleans Convention Center;

e. funding for the Level I Trauma Service operational costs anticipated at the Elmwood Hospital location;

f. Provide the HCSD hospitals with the ability to continue its current level of support for Mental and Behavioral Health Programs.

F. Louisiana Family Recovery Corps

1. The Department of Social Services, Office of Community Services (DSS/OCS) will contract with the Louisiana Family Recovery Corps (LFRC) to provide (SSBG) approved services to individuals and families displaced by Hurricanes Katrina or Rita through programs developed by LFRC. The LFRC, an independent non-profit organization, was created to mobilize and coordinate humanitarian services to displaced Louisiana families in the wake of these disasters.

2. Eligibility for SSBG approved services is limited to individuals and families that were displaced as a result of Hurricane Katrina or Hurricane Rita. LFRC, in coordination with the department, is authorized to develop programs with more restrictive eligibility requirements than those provided above, including but not limited to financial eligibility, pre-storm residence, current or prospective residence, age, and disability.

3. Eligible services are those directed at the goals of:

- a. achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;
- b. achieving or maintaining self-sufficiency, including reduction or prevention of dependency;
- c. preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;
- d. preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and,
- e. securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

4. LFRC, in coordination with the department, is authorized to develop programs that provide services that are necessary to address the consequences of the hurricanes for the eligible population and are directed at the goals of SSBG.

G. Tulane University Health Sciences Center

1. Tulane University will help sustain the health care safety net in New Orleans, as well as assist in responding to the new health care crisis in this community. These funds may be utilized in the following areas:

- a. sustain, and when needed, enhance capacity to provide primary care, emergency care, public health preparedness and training, adult and child psychiatry, women's health, children's health, health equality, environmental health, infectious diseases to the to under and uninsured;
- b. maintain a high-quality biomedical workforce in the greater New Orleans region through retention of existing healthcare faculty and residents;
- c. support for the School of Public Health and Tropical Medicine;
- d. retention and establishment of primary care clinics;
- e. support for Cancer Center and Gene Therapy Center;
- f. support for clinical research and supporting faculty and staff.

H. Governor's Office of Elderly Affairs

1. The Department of Social Services will enter into an agreement with the Governor's Office of Elderly Affairs to provide necessary services to seniors as a result of hurricanes Rita or Katrina of 2005.

2. Eligibility for SSBG approved services is as follows:

- a. age 60 or over; and
- b. individuals with an adult onset disability who have a need for living assistance;
- c. clients must have resided in one of the 37 federally declared disaster parishes at the time of hurricanes Katrina and Rita of 2005. Those parishes are Acadia, Allen, Ascension, Assumption, Calcasieu, Cameron, Beauregard, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana Parish.

3. Services to be provided include the following.

- a. Material Aid Assistance includes but is not limited to assistance with prescription drugs not covered by another program, adult diapers or other personal hygiene items, basic furniture items (beds or bedding), assistance devices, such as walkers, canes, wheelchairs, and other goods such medical supplies.
- b. Minor home repairs needed in order to make homes safe and livable, such as replacement of windows, doors, door locks, minor roof repairs, flooring replacement, replacement of insulation, repairs to heating and cooling systems, and other minor repairs.
- c. Safety and access installations includes the installation of access ramps, safety grab bars in bathrooms.
- d. Chore Services. Necessary services could include, but are not limited to heavy indoor and outdoor housework such as mold removal, drapery removal/cleaning/re-installation, carpet sanitization, floor stripping and re-conditioning, debris removal, tree-trimming, or other lawn clean-up. (Routine lawn care or housework is not an allowable expense.)
- e. Information and Assistance (Information and Referral). This service assesses the client and determines what type of assistance is needed or makes provisions to provide this service. Most clients will only receive one unit of this service not to exceed \$25, which includes the agency placing this information into SAMS the existing client tracking system for GOEA.
- f. Transportation. This service will provide door-to-door assistance for clients when there is no other comparable service available. The client would make a call to reserve transport for medical appointments, to merchants who provide basic needs and any location where an applicant has an appointment for services (example: food stamp office, Road Home Center, local Council on Aging, etc.
- g. Home Care. This service will provide supervision and companionship in a home setting, not an institution, to ensure the health and safety of a senior or an individual with onset disabilities who cannot be left alone.
- h. Home Delivered Meals. Home-delivered meals are those services or activities designed to prepare and

deliver one or more meals a day to an individual's residence in order to prevent institutionalization, malnutrition, and feelings of isolation.

i. Other Needs. This category will serve clients with a service not being provided by any other source.

1. Orleans Metro Housing

1. The Department of Social Services will contract with the Orleans Metro Housing (local non-profit) to assist hurricane-affected clients in Orleans Parish, in locating suitable affordable housing in Orleans Parish.

2. To be eligible for services, clients must have lived in Orleans Parish prior to the storms of 2005. There are no age or income or other requirements.

3. Services provided by Orleans Metro Housing, include community outreach (through local churches, door-to-door in neighborhoods, etc.) to those in need of housing assistance in Orleans Parish, assisting clients in determining the types of housing that will best suit their needs and budget, matching up clients with available housing, maintaining an up-to-date inventory of sale and rental properties in the parish, referring clients to other non-profit home-buying programs if determined client has sufficient income, referring clients to agencies that provide financial assistance for housing and household expenses, negotiating with leasers or landlords on behalf of clients, and other related services.

AUTHORITY NOTE: Promulgated in accordance with Title XX of the Social Security Act and Department of Defense Appropriations Act (H.R. 2863).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 33:

Ann Silverberg Williamson
Secretary

0708#003

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Temporary Emergency Disaster Assistance Program (LAC 67:III.5583)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend §5583, Temporary Emergency Disaster Assistance Program (TEDAP) effective August 29, 2007. This Rule shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective May 1, 2007, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in the October 2007 issue.)

The agency proposes to expand the income eligibility criteria of the TEDAP Program to 250 percent of the federal poverty level and to expand the list of allowable household establishment funds available to eligible families to include living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, utility

assistance, property repair, household items, basic personal items and moving assistance.

Emergency action is necessary due to the extreme demands for social services caused by the hurricanes in the Gulf of Mexico in calendar year 2005. TANF funds may be used for a wide array of human services and this appropriation must be expended by September 30, 2007. The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5583. Temporary Emergency Disaster Assistance Program

A. Effective October 26, 2005, the agency will enter into contracts to provide disaster emergency services to needy families with dependent children or pregnant women who are displaced because of disasters. The program will provide the following services.

1. Services or Benefits Considered to Meet On-Going Basic Needs. These services shall not be provided for a period (in whole or in part) to exceed four months. Such services and benefits include, but are not limited to the provision of such items as basic personal items, household items, housing and utility assistance, living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, property repair, and moving assistance.

A.2 - B. ...

C. Eligibility for services is limited to needy families with minor dependent children, or minor dependent children living with caretaker relatives within the fifth degree of relationship, or pregnant women:

1. ...

2. whose income is at or below 250 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session, TANF Emergency Response and Recovery Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:32 1617 (September 2006), amended LR 33:

Ann Silverberg Williamson
Secretary

0708#078

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2007-2008 Early Migratory Bird Seasons

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

The hunting seasons for early migratory birds during the 2007-2008 hunting season shall be as follows.

Teal: September 15-September 30

Daily bag limit 4, possession limit 8, blue-winged, green-winged and Cinnamon teal only. Federal and state waterfowl stamps required.

Rails: Split Season, Statewide, 70 days
September 15 - September 30

Remainder of season to be set in August with the duck regulations.

King and Clapper: Daily bag limit 15 in the aggregate and possession 30 in the aggregate.

Sora and Virginia: Daily and possession bag 25 in the aggregate.

Gallinules: Split Season, Statewide, 70 days
September 15-September 30

Remainder of season to be set in August with the duck regulations.

Common and Purple: Daily bag limit 15 in the aggregate, possession of 30 in the aggregate.

Woodcock: December 18-January 31, Statewide
Daily bag limit 3, possession limit 6.

Snipe: Deferred to be set in August with the duck regulations.

Extended Falconry Season

Doves: the term "dove" refers to the following species: mourning doves, white-winged doves, Eurasian collared-doves and ringed-turtle doves. Statewide

September 17-October 9

Woodcock: Split Season, Statewide

October 28-December 17

February 1-February 11

Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during the extended falconry seasons and regular hunting seasons. Remainder of extended falconry seasons for ducks, rails, gallinules to be set in August with the duck regulations.

Shooting and Hawking Hours:

Teal, Rail, Woodcock, and Gallinule: One-half hour before sunrise to sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting

opportunities to the 140,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2007 and extend through sunset on February 28, 2009.

Bryant O. Hammett, Jr.
Secretary

0708#052

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2007 Fall Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or parts of state inside waters and shall have the authority to open or close state outside waters, the Wildlife and Fisheries Commission does hereby set the 2007 Fall Shrimp Season in inside waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River, to open at 12 noon, August 13, 2007, and

Shrimp Management Zone 2, that portion of state inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at 12 noon, August 13, 2007, and

Shrimp Management Zone 3, that portion of state inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line, to open at 12 noon, August 6, 2007.

The Commission also hereby sets the closing date for the 2007 Fall Shrimp Season in inside waters in Zones 1, 2 and 3 at official sunset December 18, 2007 except in the open waters of Breton and Chandeleur Sounds as described by the double-rig line (LA R.S. 56:495.1(A)2) which shall remain open until 6:00 a.m., March 31, 2008. The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the closing dates if biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters.

Patrick C. Morrow
Vice-Chairman

0708#050

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2007-2008 Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953(B) and 967(D), and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

The 2007/2008 oyster season in the primary public oyster seed grounds east of the Mississippi River, as described in Louisiana Administrative Code (LAC) 76:VII.511 and LAC 76:VII.513, including the sacking only area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, and including the Bay Gardene Public Oyster Seed Reservation, as described in R.S. 56:434.E, shall open one-half hour before sunrise on September 5, 2007 and close one-half hour after sunset on September 21, 2007. These areas shall then re-open at one-half hour before sunrise on November 12, 2007 and shall close one half-hour after sunset on April 1, 2008. The 2007 cultch plant locations in Black Bay and Turkey Bayou within the following coordinates shall remain closed:

Black Bay-Plaquemines Parish

1. 29 degrees 37 minutes 30 seconds N latitude
89 degrees 33 minutes 29 seconds W longitude
2. 29 degrees 37 minutes 30 seconds N latitude
89 degrees 33 minutes 00 seconds W longitude
3. 29 degrees 37 minutes 00 seconds N latitude
89 degrees 33 minutes 00 seconds W longitude
4. 29 degrees 37 minutes 00 seconds N latitude
89 degrees 33 minutes 30 seconds W longitude

Turkey Bayou-St. Bernard Parish

1. 30 degrees 05 minutes 05.51 seconds N latitude
89 degrees 19 minutes 06.05 seconds W longitude
2. 30 degrees 05 minutes 42.24 seconds N latitude
89 degrees 18 minutes 30.04 seconds W longitude
3. 30 degrees 05 minutes 30.76 seconds N latitude
89 degrees 18 minutes 14.56 seconds W longitude
4. 30 degrees 04 minutes 54.03 seconds N latitude
89 degrees 18 minutes 50.58 seconds W longitude

The oyster season in the Hackberry Bay Public Oyster Seed Reservation as described in R.S. 56:434.E shall open one-half hour before sunrise on September 5, 2007 and shall close one-half hour after sunset on September 21, 2007.

The oyster season in the Little Lake Public Oyster Seed Grounds as described in LAC 76:VII.521 shall open one-half hour before sunrise on September 5, 2007 and shall close one-half hour after sunset on September 21, 2007. Little Lake shall then re-open at one-half hour before sunrise on November 12, 2007 and shall close one half-hour after sunset on April 1, 2008.

The oyster season in the Lake Felicity and Lake Chien Public Oyster Seed Grounds as described in LAC 76:VII.51

shall open one-half hour before sunrise on October 24, 2007 and shall close one-half hour after sunset on October 26, 2007.

The oyster season in the Lake Mechant Public Oyster Seed Grounds as described in LAC 76:VII.517 shall open one-half hour before sunrise on October 24, 2007 and shall close one-half hour after sunset on October 31, 2007.

The oyster season in the Sister Lake Public Oyster Seed Reservation as described in R.S. 56:434.E shall open one-half hour before sunrise on November 12, 2007 and shall close one-half hour after sunset on December 5, 2007.

The Vermilion/East and West Cote Blanche/Atchafalaya Bay Public Oyster Seed Grounds, as described in LAC 76:VII.507 and LAC 76:VII.509, shall open one-half hour before sunrise on September 5, 2007 and shall close one-half hour after sunset on April 1, 2008.

The oyster season in the Calcasieu Lake public oyster area, as described in R.S. 56:435.1 and R.S. 56:435.1.1, is detailed as follows:

1. Calcasieu Lake West Cove Conditional Management Area (west side of Calcasieu Ship Channel) shall open one-half hour before sunrise on October 15, 2007 and shall close one half-hour after sunset on April 30, 2008.

2. Calcasieu Lake Conditional Management Area (east side of Calcasieu Ship Channel) shall open one-half hour before sunrise on November 1, 2007 and shall close one half-hour after sunset on April 30, 2008.

The sack limit for Calcasieu Lake is set at 15 sacks per day as provided for in R.S. 56:435.1.1. However, these conservation actions shall not supercede public health closures.

The following areas will remain closed for the 2007/2008 oyster season: the Bay Junop Public Oyster Seed Reservation (as described in R.S. 56:434.E), the Barataria Bay, Deep Lake, and Lake Tambour Public Oyster Seed Grounds (as described in LAC 76:VII:517), and the Sabine Lake Public Oyster Tonging Area as described in R.S. 56:435.1.

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Department of Health and Hospitals for public health concerns.

Patrick C. Morrow
Vice-Chairman

0708#051

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Shrimp Season Closure—Zone 1

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a resolution adopted by the Wildlife and Fisheries Commission on May 3, 2007 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2007 Spring Inshore Shrimp Season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or if enforcement problems develop, the secretary hereby declares:

The 2007 spring inshore shrimp season within Shrimp Management Zone 1 except for the open waters of Breton and Chandeleur Sounds as described by the double-rig line (R.S.56:495.1) will close on Monday, July 16 at 6 p.m. Zone 1 comprises state inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River.

The State Territorial waters south of the Inside/Outside Shrimp Line, as described in R.S. 56:495, shall also remain open to shrimping.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples within those portions of Zone 1 to be closed has rapidly increased in recent weeks and these waters are being closed to protect these developing shrimp.

Bryant O. Hammett, Jr.
Secretary

0708#002

Rules

RULE

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

Germination Tolerance Standards (LAC 7:XIII.105 and 207)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 3:1433, the Department of Agriculture and Forestry, Office of the Louisiana Seed Commission, adopts regulations regarding germination tolerances for seed and the sugarcane (tissue culture) greenhouse requirements.

This Rule updates germination tolerance standards in order to meet current germination standards set by the Association of Official Seed Analysts in 2005 and to amend Sugarcane (Tissue Culture) Certification Standards in order to prevent the introduction and spread of potentially harmful insects and diseases to foundation sugarcane stock. This Rule is enabled by R.S. 3:1431 and 3:1433.

Title 7

AGRICULTURE AND ANIMALS

Part XIII. Seeds

Chapter 1. Louisiana Seed Law

Subchapter A. Enforcement of the Louisiana Seed Law

§105. Tolerances

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 between Two and Four Replicates of 100 Seeds in a Germination Test							
Average Percent Germination		No. Replicates of 100 Seeds		Average Percent Germination		No. Replicates of 100 Seeds	
A	B	C	D	A	B	C	D
99	2	5	--	75	26	17	14
98	3	6	--	74	27	17	14
97	4	7	6	73	28	17	14
96	5	8	6	72	29	18	14
95	6	9	7	71	30	18	14
94	7	10	8	70	31	18	14
93	8	10	8	69	32	18	14
92	9	11	9	68	33	18	15
91	10	11	9	67	34	18	15
90	11	12	9	66	35	19	15
89	12	12	10	65	36	19	15
88	13	13	10	64	37	19	15
87	14	13	11	63	38	19	15
86	15	14	11	62	39	19	15
85	16	14	11	61	40	19	15

Maximum Tolerance Values between Two and Four Replicates of 100 Seeds in a Germination Test							
Average Percent Germination		No. Replicates of 100 Seeds		Average Percent Germination		No. Replicates of 100 Seeds	
A	B	C	D	A	B	C	D
84	17	14	11	60	41	19	15
83	18	15	12	59	42	19	15
82	19	15	12	58	43	19	15
81	20	15	12	57	44	19	15
80	21	16	13	56	45	19	15
79	22	16	13	55	46	20	15
78	23	16	13	54	47	20	16
77	24	17	13	53	48	20	16
76	25	17	13	52	49	20	16
				51	50	20	16

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).

Subchapter C. Certification of Specific Crops/Varieties §207. Sugarcane (Tissue Culture) Certification Standards

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 four 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 third 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	

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: ***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,

Bob Odom
Commissioner

0708#024

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Alternate Assessment Results and District Accountability (LAC 28:LXXXIII.4302, and 4313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC 28: LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components. The changes to Bulletin 111 revise the use of alternative assessment results in accountability as suggested by the LDE's Technical Advisory Committee. Section 4302 revises district accountability to better align with the high school redesign efforts initiated by the governor. Section 4313 defines the requirements for exiting district improvement in anticipation of districts' first opportunity to exit.

**Title 28
EDUCATION**

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 43. District Accountability

§4302. District Responsibility Indicators

A. Teacher Certification Indicator. The Teacher Certification Indicator is based on the percentage of state

core classes (English, mathematics, science, and social studies) taught by three categories of teachers, those with:

1. standard teaching certificate for area of assignment;
2. non-standard certificate for area of assignment (out of field or temporary authority—TAT, OFAT, TEP); or
3. no authority to teach (no certification).

B.1. The LDE shall calculate two teacher certification indices:

- a. low performing schools (one star and academically unacceptable);
- b. other schools—not low performing (two star and above).

2. In instances when a district's schools all fall into 1 category (low performing or other), the index for that category shall also be considered the overall teacher certification indicator.

3. The low performing school index is assigned a 75 percent weighting and the other school index a 25 percent weighting in the teacher certification indicator.

4. Each teacher certification index is calculated by first determining the percentage of state core classes taught by each of the three categories of teachers in the appropriate school group (low performing or other—not low performing).

5. The percentages of state core classes taught by teachers in each category are weighted and converted to points by the following factors:

- a. 1.0 times the percentage of classes taught by teachers with standard certification;
- b. 0.5 times the percentage of classes taught by teachers with non-standard certification;
- c. 0.0 times the percentage of classes taught by teachers with no authority to teach.

6. Sum the weighted points for low performing schools and again for other schools.

7. Weight the low performing schools point total by 75 percent.

8. Weight the other schools point total by 25 percent.

9. The district teacher certification Indicator is the sum of the values from Paragraphs 7 and 8 (above).

10. Example of the Calculation of the District Teacher Certification Indicator

District Teacher Certification Indicator Calculation					
Certification	Assigned Value	Percentage in Low Performing Schools	Points	Percentage in Other Schools	Points
Standard	1.0	92.4%	92.4	92.2%	92.2
Non-Standard	0.5	5.0%	2.5	4.8%	2.4
No Authority to Teach	0.0	2.6%	0.0	3.0%	0.0
Subtotals			94.9		94.6
Low Performing Weight	75%	x 94.9	Low Performing Weighted Value		71.2
Other Schools Weight	25%	x 94.6	Other Schools' Weighted Value		23.7
Teacher Certification Indicator					94.9

11. Districts shall be assigned a label based on the value of the District Teacher Certification Indicator as follows.

District Teacher Certification Indicator	
Indicator Value	Label
97.0 – 100.0	Exceptional
94.0 – 96.9	Adequate
90.0 – 93.9	Marginal
< 90.0	Unacceptable

C. Eighth Grade Persistence Indicator. The 8th Grade Persistence Indicator is based on a district's success at keeping 8th grade students enrolled in school.

1. The 8th Grade Persistence Indicator shall be calculated using an aggregate of two years of student data, and because of extensive time afforded districts to correct exit data, it shall use data lagged by 1 year.

a. Example

The Spring 2007 8th Grade Persistence Indicator shall be calculated using data from academic years 2003-04 and 2004-05.

2. Students enrolled in a district for at least one full day of a given academic year, less those students exiting the district school system for legitimate reasons (as defined in the Student Information System User Guide) shall be included in the denominator used to calculate the 8th Grade Persistence Indicator.

3. Since the calculation aggregates two years of student data, those students eligible for inclusion in the denominator in one or both of the appropriate two years shall provide the count to be used as the denominator.

4. The numerator is comprised of those students in the denominator who are enrolled in public education for at least one day the following academic year.

5. Example of the Calculation of the District 8th Grade Persistence Indicator

District 8th Grade Persistence Indicator Calculation						
Enrolled			Returned Oct 1			
2003-04	2004-05	Total	2004	2005	Total	Percent Returned
669	713	1382	660	702	1362	98.6%

6. Districts shall be assigned a label based on the value of the District 8th Grade Persistence Indicator as follows.

District 8th Grade Persistence Indicator	
Indicator Value	Label
98.0-100.0	Exceptional
96.0-97.9	Adequate
94.0-95.9	Marginal
< 94.0	Unacceptable

D. Financial Risk Indicator. The factors included in the Financial Risk Indicator were originally developed in 2004-05. The use of this data as a district responsibility indicator will be defined following any needed revisions.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:634 (April 2005), amended LR 33:1611 (August 2007).

§4313. Corrective Actions

A. The Louisiana Department of Education shall report district scores and labels on every school district.

B. Beginning in 2004, districts shall be evaluated on their District Responsibility Index label and on the subgroup component. Districts that receive a DRI Index label of unresponsive and/or fail all clusters, in the same subject, on the subgroup component shall complete a district self-assessment and submit it to the Louisiana Department of Education. Following the Spring 2006 district accountability release, the District Responsibility Index and the associated labels shall be discontinued. At that time, districts must complete a self-assessment only after failing all 3 clusters in the same subject.

1. The DOE shall review each self-assessment.

2. The DOE may recommend that BESE schedule a District Dialogue with the district.

C. - E. ...

F. Districts shall exit district improvement if they pass Subgroup AYP in the same subject for which they entered District Improvement in the same cluster for 2 consecutive years. An example is in the following table.

Examples of Districts That Entered District Improvement (DI) in 2004 Due to Math Results							
	2005			2006			Result
	K-5	6-8	9-12	K-5	6-8	9-12	
Cluster Performance	Pass	Fail	Fail	Fail	Pass	Pass	Remain in DI
	Pass	Pass	Pass	Fail	Fail	Fail	Advance to DI Level 2
	Pass	Fail	Fail	Pass	Fail	Fail	Exit DI
	Fail	Pass	Pass	Fail	Fail	Pass	Exit DI

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:424 (February 2005), LR 31:635 (March 2005), LR 31:1256 (July 2005), LR 33:1612 (August 2007).

Weegie Peabody
Executive Director

0708#004

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Complaint Procedures (LAC 28:CXV.349)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to Bulletin 741—Louisiana Handbook for School Administrators: §349—Complaint Procedures. This Rule establishes procedures to handle complaints by the Louisiana Department of Education on issues related to *The Elementary and Secondary Education Act* of 1965, 20 U.S.C. §6301 et seq., (ESEA). The Rule defines the applicable programs covered by the Rule, identifies the process for filing a complaint, establishes timelines for the resolution of the complaint, and requires that complaints are tracked and reported to the State Board of Elementary and Secondary Education. The Department of Education was cited by the U.S. Department of Education for the lack of a formal complaint process on issues related to programs in ESEA. A complaint procedure is required in §9305 of the ESEA and 34 CFR Chapter II, §299.10.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 3. Operation and Administration

§349. Complaint Procedures

A. These complaint procedures are established for resolving complaints which may be filed against the DOE or an agency pursuant to provisions of the *Elementary and Secondary Education Act of 1965*, 20 U.S.C. §6301 et seq., (ESEA).

B. The following definitions apply to this Section.

Agency—a local educational agency, educational service agency, consortium of those agencies, or entity.

Applicable Program—any of the following ESEA programs for which the DOE has submitted a consolidated state plan or consolidated state application under the ESEA, which may include:

- a. Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies);
- b. Title I, Part B, Subpart 3 (Even Start Family Literacy Programs);
- c. Title I, Part C (Education of Migratory Children);
- d. Title I, Part D (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk); , the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions

to *Bulletin 741—Louisiana Handbook for School Administrators*: §349, Complaint Procedures;

- e. Title I, Part F (Comprehensive School Reform);
- f. Title II, Part A (Teaching and Principal Training and Recruitment Fund);
- g. Title II, Part D (Enhancing Education through Technology);
- h. Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement);
- i. Title IV, Part A, Subpart 1 (Safe and Drug-Free Schools and Communities);
- j. Title VI, Part A, Subpart 2 (Community Service Grants);
- k. Title IV, Part B (21st Century Community Learning Centers);
 - l. Title V, Part A (Innovative Programs);
 - m. Title VI, Part A, Subpart 1, Sections 6111 and 6112 (Improving Academic Achievement Programs); and
 - n. Title VI, Part B, Subpart 2 (Rural and Low-Income Schools Program).

Covered Program—a federal program not defined as an applicable program for which the DOE is required to provide a complaint procedure and for which a complaint procedure is not otherwise provided by rule of the DOE.

C. This Subsection sets forth the specific procedures for resolving complaints that are filed pursuant to the ESEA.

1. DOE will receive complaints from individuals or organizations alleging:

- a. a violation of law in the administration of an applicable program; or
- b. a violation of a federal statute or regulation that applies to a covered program for which federal law permits the filing of a complaint with the DOE.

2. The complaint must be in writing and must include:

- a. a statement that DOE or an agency has violated a requirement of a federal statute or regulation that applies to an applicable program or a covered program;
- b. the facts on which the statement is based, including the name of the agency or agencies, and the specific requirement alleged to have been violated;
- c. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
- d. the signature and contact information for the complainant or his or her designated representative; and
- e. the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the DOE.

3. Upon receipt of a complaint against an agency that meets the requirements of §349.C.2, the DOE will acknowledge receipt of the complaint in writing and provide written notice to the agency against which the violation has been alleged. DOE will provide the agency with the opportunity to resolve the complaint without a finding, with the participation and agreement of the complainant.

4. If the complaint concerns a violation by the DOE and meets the applicable requirements of §349.C.2, the State Superintendent of Education will appoint an impartial person(s) to conduct an investigation and resolve the complaint. The person(s) so appointed will acknowledge receipt of the complaint in writing.

5. All complaints must be resolved within 60 days of the date the DOE receives the complaint. Within that 60-day timeline, the DOE, or the impartial investigator when a complaint is filed against the DOE, will:

- a. carry out an independent on-site investigation, if the DOE or impartial investigator determines that an investigation is necessary;
- b. give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- c. provide the DOE or agency with the opportunity to respond to the complaint, including, at the discretion of the agency, a proposal to resolve the complaint;
- d. review all relevant information and make an independent determination as to whether the DOE or agency is violating a requirement of the ESEA; and
- e. issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - i. findings of fact and conclusions;
 - ii. the reasons for the final decision; and
 - iii. a statement of the complainant's right to request the Secretary of the U.S. Department of Education (Secretary) to review the final decision, at the secretary's discretion.

6. Complaints regarding participation by private school children must be appealed to the secretary no later than 30 days after the decision is issued. An appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of reasons supporting the appeal.

7. Written decisions on complaints alleging violations by DOE will be provided to BESE.

8. Timelines for DOE's final decision may be extended if exceptional circumstances exist with respect to a particular complaint.

9. The DOE's final decision must be implemented and include, if needed:

- a. technical assistance activities;
- b. negotiations; and
- c. corrective actions to achieve compliance.

10. Nothing herein shall preclude the availability of an informal resolution between the complainant and the DOE or agency, nor shall anything herein preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation.

11. DOE will implement a process for tracking complaints received by DOE to facilitate timely investigation and resolution.

12. DOE will maintain a complaint log which includes the following components:

- a. date of receipt of complaint;
- b. name of complainant;
- c. name of agency, or DOE if complaint is against DOE;
- d. resolution, including technical assistance activities and corrective action plan, if needed;
- e. date of resolution;
- f. date of follow-up on technical assistance activities and corrective action plan, if assigned, and the results of that activity.

D. An agency will disseminate, free of charge, adequate information about the complaint procedures to parents of

students, and appropriate private school offices or representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 20 U.S.C. §6320, 20 U.S.C. §7883(a); 20 U.S.C. §7844(a)(3)(C); 34 C.F.R. § 106.8(b), and 34 C.F.R. §§299.11-299.12.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:1613 (August 2007).

Weegie Peabody
Executive Director

0708#005

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Curriculum and Instruction
(LAC 28: CXV. Chapter 23)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2375, Business Education; §2381, Health Occupations; §2383, Marketing Education; and §2387, Trade and Industrial Education. The action is being proposed to up-date Career and Technical course offerings. In updating these courses offerings our Career and Technical program of studies will be more aligned with national standards.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction §2375. Business Education

A. The Business Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Exploratory Keyboarding (Middle School)	6-8	-
Accounting I	10-12	1
Accounting II	11-12	1
Administrative Support Occupations	11-12	1
Business Communications	10-12	1
Business Computer Applications	10-12	1
Business Education Elective I, II	9-12	1/2-3
Business English	12	1
Business Law	11-12	1/2
Computer Technology Literacy	9-12	1
Computer Multimedia Presentations	11-12	1/2
Cooperative Office Education (COE)	12	3
Desktop Publishing	11-12	1
Economics	11-12	1
Entrepreneurship	11-12	1
Financial Mathematics	10-12	1
Introduction to Business Computer Applications	9-12	1
Keyboarding	9-12	1/2
Keyboarding Applications	9-12	1/2
Lodging Management I	10-12	1-3
Lodging Management II	11-12	1-3
Principles of Business	9-12	1
Telecommunications	10-12	1/2
Web Design	10-12	1

Course Title(s)	Recommended Grade Level	Units
Web Design II	10-12	1
Word Processing	11-12	1

B. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 33:277, 278 (February 2007), LR 33:1614 (August 2007).

§2381. Health Occupations

A. Health Occupations course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
AHEC of a Summer Career Exploration	9-12	1/2
Allied Health Services I	10-12	1-2
Allied Health Services II	10-12	1-2
Cooperative Health Occupations	11-12	3
Dental Assistant I	10-12	1-2
Dental Assistant II	11-12	2-3
Emergency Medical Technician—Basic	10-12	2
First Responder	9-12	1/2-2
Health Occupations Elective I, II	9-12	1/2-3
Health Science I	11-12	1-2
Health Science II	12	1-2
Introduction to Emergency Medical Technology	10-12	2
Introduction to Health Occupations	9-12	1
Introduction to Pharmacy Assistant	10-12	1-2
Medical Assistant I	10-12	1-2
Medical Assistant II	11-12	1-2
Medical Assistant III	12	1-2
Medical Terminology	9-12	1
Nursing Assistant I	10-12	1-3
Nursing Assistant II	11-12	1-3
Pharmacy Technician	12	1-2
Sports Medicine I	10-12	1-2
Sports Medicine II	11-12	1-2
Sport Medicine III	11-12	1

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 33:1615 (August 2007).

§2383. Marketing Education

A. Marketing Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Advertising and Sales Promotion	11-12	1
Cooperative Marketing Education I	11-12	3
Cooperative Marketing Education II	12	3
Customer Service	12	1
Entrepreneurship	11-12	1
Marketing Education Elective I, II	9-12	1/2-3
Marketing Management	11-12	1
Marketing Research	11-12	1
Principles of Marketing I	9-12	1
Principles of Marketing II	12	1
Retail Marketing	11-12	1
Tourism Marketing	11-12	1

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 33:1615 (August 2007).

§2387. Trade and Industrial Education

A. Trade and Industrial Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Air Conditioning/ Refrigeration I, II	11-12	1-3
Air Conditioning/ Refrigeration III, IV	11-12	2-3
Auto Body Repair I, II	11-12	1-3
Auto Body Repair III, IV	11-12	2-3
Automotive Technician I, II	11-12	1-3
Automotive Technician III, IV, V, VI	11-12	3
General Automotive Maintenance	11-12	1-3
G. M. Technician I, II	11-12	1-3
ABC Carpentry I, II	11-12	1-3
ABC Electrical I, II	11-12	1-3
ABC Instrumentation Control Mechanic I, II	11-12	1-3
ABC Pipe Fitter I, II	11-12	1-3
ABC Welding Technology I, II	11-12	1-3
Masonry I, II	11-12	1-3
Cabinetmaking I, II	11-12	1-3
Carpentry I, II	11-12	1-3
Carpentry III, IV	11-12	2-3
Culinary Occupations I, II	11-12	1-3
Culinary Occupations III, IV	11-12	2-3
Custom Sewing I, II	11-12	1-3
Computer Electronics I, II	11-12	1-3
Computer Service Technology I, II	11-12	2-3
Commercial Art I, II	11-12	1-3
T & I Cooperative Education (TICE) I	11-12	1-3
T & I Cooperative Education (TICE) II	12	1-3
T & I Elective I	11-12	1-3
T & I Elective II	11-12	1-3
Cosmetology I, II	11-12	1-3
Cosmetology III, IV	11-12	2-3
Diesel Mechanics I, II	11-12	1-3
Diesel Mechanics III, IV	11-12	2-3
Drafting and Design Technology I, II	11-12	1-3
Drafting and Design Technology III, IV	11-12	2-3
Basic Electricity I, II	11-12	1-3
Electronics I, II	11-12	1-3
Industrial Electronics I, II	11-12	1-3
Electrician I, II	11-12	1-3
Electrician III, IV	11-12	2-3
Graphic Arts I, II	11-12	1-3
Graphic Arts III, IV	11-12	2-3
Horticulture I, II	11-12	1-3
Industrial Engines I, II	11-12	1-3
Laboratory Technology I, II	11-12	1-3
Industrial Machine Shop I, II	11-12	1-3
Industrial Machine Shop III, IV	11-12	2-3
Marine Operations I, II	11-12	1-3
Photography I, II	11-12	1-3
Networking Basics	10-12	2-3
Routers and Routing Basics	10-12	2-3
Switching Basics & Intermediate Routing	11-12	2-3
WAN Technologies	11-12	2-3
Plumbing I, II	11-12	1-3
Printing I, II	11-12	1-3
Sheet Metal I, II	11-12	1-3
Outdoor Power Equipment Technician I, II	11-12	1-3
Outdoor Power Equipment Technician III, IV	11-12	2-3

Course Title(s)	Recommended Grade Level	Units
Television Production I, II	11-12	1-3
Upholstery I, II	11-12	1-3
Welding I, II	11-12	1-3
Welding III, IV	11-12	2-3

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 32:1415 (August 2006), LR 33:1615 (August 2007).

Weegie Peabody
Executive Director

0708#006

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Ancillary School Service Certificates (LAC 28:CXXXI.407, 408, 409, and 410)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §407, Educational Interpreter and §408, Educational Transliterators. This revision in the requirements for Educational Interpreter/Transliterators links the definition of interpreters/transliterators to IDEA's related services definition and separates the requirements for Educational Interpreters and Educational Transliterators. This policy also removes the requirement of first obtaining a provisional certification prior to the issuance of a qualified certificate and allows a provisionally certificated interpreter and/or transliterator the option of a three year window for renewal instead of two years. The grandfather clause for certification is eliminated along with an additional assessment option being added. A streamlined process was needed in recognizing qualifications of candidates applying for a Qualified Certificate. The changes also distinguish between the different requirements for Educational Interpreters and Educational Transliterators.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 4. Ancillary School Service Certificates Subchapter A. Child Nutrition Program Supervisor §407. Educational Interpreter

A. An Educational Interpreter certificate is issued to individuals who provide sign language interpreting services by facilitating communication within an instructional environment via an enhanced visual and/or tactile mode between and among deaf/hard of hearing and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

B. This certificate is issued to individuals who have at least a standard high school diploma or a General Equivalency Diploma (GED) and who meet the guidelines outlined in this document. There are two basic types of certification for Educational Interpreters: Provisional and Qualified.

C. Provisional Educational Interpreter Certificate

1. Eligibility Requirements—issued to applicants who fulfill one of the following:

- complete an accredited interpreter preparation program with a minimum of a certificate of completion;
- hold certification as a sign language interpreter/transliterators by a national or state organization or certifying body;
- achieve an advanced level or higher, as measured by the Sign Language Proficiency Interview (SLPI) or Sign Communication Proficiency Interview (SCPI); or
- pass the Pre-Hiring screening of the Educational Interpreter Performance Assessment (EIPA).

2. Renewal Guidelines

a. The Provisional Educational Interpreter certificate is valid for one year, may be renewed annually at the request of the Louisiana employing authority, and can be held for a maximum of three years.

b. This certificate is renewable upon completion of 10 contact hours of professional development annually. Course credit leading to a Qualified Certificate may be applied towards the 10 hours. These hours shall be accrued beginning with the issuance of the Provisional Educational Interpreter Certificate.

D. Qualified Educational Interpreter Certificate

1. The Qualified Educational Interpreter certificate is issued at the Elementary and/or Secondary level.

2. Eligibility requirements: Issued to applicants who fulfill all of the following:

- pass the Educational Interpreter Assessment, Written Test;
- achieve a level of 3.0 on one of the standardized videotape versions of the Educational Interpreter Performance Assessment: American Sign Language (ASL), Manually Coded English (MCE), or Pidgin Signed English (PSE) at the Elementary and/or Secondary level.

3. Renewal Guidelines

a. May be renewed every five years at the request of the Louisiana employing authority upon completion of six semester hours of credit or equivalent continuing professional development (90 Contact hours).

b. The six hours of credit or 90 equivalent clock hours shall be directly and substantively related to one or more of the permits or certificates held by the applicant or related to the applicant's professional competency.

c. These hours shall be accrued beginning the date of issuance of the Qualified Educational Interpreter Certificate.

E. An individual who does not meet the Qualified Certificate requirements may apply for a provisional certificate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1808 (October 2006), amended LR 33:1616 (August 2007).

§408. Educational Transliterater

A. An Educational Transliterater certificate is issued to individuals who provide cued language transliteration services by facilitating communication within an instructional environment via an enhanced visual and/or tactile mode between and among deaf/hard of hearing and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

B. This certificate is issued to individuals who have at least a standard high school diploma or a General Equivalency Diploma (GED) and who meet the guidelines outlined in this document. There are two basic types of certification for Educational Transliteraters: Provisional and Qualified.

C. Provisional Educational Transliterater Certificate

1. Eligibility Requirements: Issued to applicants who fulfill one of the following:

a. hold certification as a cued speech transliterater from a national or state recognized organization or certifying body; or

b. pass the Cued American English Competency Screening.

2. Renewal Guidelines

a. The Provisional Educational Transliterater certificate is valid for one year, may be renewed annually at the request of the Louisiana employing authority, and can be held for a maximum of three years.

b. This certificate is renewable upon completion of ten contact hours of professional development annually. Course credit leading to a Qualified Educational Transliterater Certificate may be applied toward the 10 hours. These hours shall be accrued beginning with the issuance of the Provisional Educational Transliterater Certificate.

D. Qualified Educational Transliterater Certificate

1. Eligibility requirements: Issued to applicants who fulfill the following:

a. pass the Cued Language Transliterater State level Performance Assessment; or attain a level of 3.5 on the Educational Interpreter Performance Assessment-Cued Speech (EIPA-CS); and

b. pass the Cued Language Transliterater State Level Written Assessment.

2. Renewal Guidelines

a. May be renewed every five years at the request of the Louisiana employing authority upon completion of six semester hours of credit or equivalent continuing professional development (90 Contact hours).

b. The six hours of credit or 90 equivalent clock hours shall be directly and substantively related to one or more of the permits or certificates held by the applicant or related to the applicant's professional competency.

c. These hours shall be accrued beginning the date of issuance of the Qualified Educational Transliterater Certificate.

E. An individual who does not meet Qualified Educational Transliterater Certificate requirements may apply for a provisional certificate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:1617 (August 2007).

§409. School Librarian

A. School Librarian—valid for five years.

1. Eligibility requirements:

a. master's degree in library science from a regionally accredited institution; and

b. passing score on Praxis Library Media Specialist examination (#0310).

2. Renewal Guidelines

a. Complete 150 continuing learning units of district-approved and verified professional development over the five year time period during which the certificate is held.

b. The Louisiana employing authority must request renewal of an Ancillary School Librarian Certificate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1808 (October 2006), amended LR 33:1617 (August 2007).

Editor's Note: §408, Junior Reserve Officers Training Corps Instructor (ROTC), has moved to §410 and is being reprinted to show the new placement.

§410. Junior Reserve Officers Training Corps Instructor (ROTC)

A. An ancillary certificate issued in ROTC authorizes an individual to teach Junior ROTC.

B. Provisional Certification: Valid for five years.

1. Eligibility requirements:

a. be retired from active duty in the retired grades of E-6 through E-9, WO-1 through CWO-5, O3 through O6; and

b. official recommendation by appropriate branch of the military service with certification by the appropriate Department of Defense.

2. Renewal Guidelines. May be renewed upon request of the Louisiana employing authority.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:281 (February 2007), repromulgated LR 33:1617 (August 2007).

Weegie Peabody
Executive Director

0708#007

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Counselor K-12
(LAC 28:CXXXI.659)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 746—Louisiana*

Standards for State Certification of School Personnel: §659, Counselor K-12 (Counselor in a School Setting). This revision in the requirements for add-on certification as a school counselor will allow three years of successful experience as a school counselor to substitute for the required three-semester-hour supervised practicum in a school setting. The change will allow more candidates to meet the add-on certification requirements for school counselor and will increase the pool of certified school counselors in the state of Louisiana.

**Title 28
EDUCATION**

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

**Chapter 6. Endorsements to Existing Certificates
Subchapter C. All Other Teaching Endorsement Areas
§659. Counselor K-12 (Counselor in a School Setting)**

A. - A.3.g. ...

h. Supervised Practicum in a School Setting, or three years of successful experience as a school counselor.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1819 (October 2006), amended LR 33:1618 (August 2007).

Weegie Peabody
Executive Director

0708#008

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Foreign Language Special Certificate PK-8 (LAC 28:CXXXI.311)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel: §311, Foreign Language Special Certificate PK-8*. This revision in policy will allow the Foreign Language Special Certificate PK-8 to be valid for six years due to changes in the visa requirements. Changes in visa requirements adversely affect Foreign Associate Teachers who wish to continue to teach in Louisiana past their initial commitment. Federal visa requirements require applicants to be certified and employed for the period covered by the visa application. Applications must be submitted a year in advance. Current policy for the Foreign Language Special Certificate limits the length of visa validity for continuing Foreign Associate Teachers, to the detriment of the Foreign Language Model Program.

**Title 28
EDUCATION**

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 3. Teaching Authorizations and Certifications

Subchapter A. Standard Teaching Authorizations

§311. Foreign Language Special Certificate PK-8

A. Valid for Six Years. Teachers currently holding a three-year Foreign Language Special PK-8 certificate are eligible for the six-year certificate upon request.

B. - D. 4. ...

E. A teacher may hold a Foreign Language Special certificate for no more than six years. After six years on such a certificate, the teacher may apply for a Louisiana Level 1 professional teaching certificate. To receive a Level 1 teaching certificate, the teacher must meet all certification requirements, including Praxis examinations for the area(s) and level(s) of certification.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 33:1618 (August 2007).

Weegie Peabody
Executive Director

0708#009

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Library Service (LAC 28:CXXXI.673)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel: §673, School Library Service*. This revision in the requirements for add-on certification as a school librarian will allow three years of successful experience as a school librarian to substitute for the required three-semester-hour school librarian practicum. The change will allow more candidates to meet the add-on certification requirements for school librarian and will increase the pool of certified school librarians in the state of Louisiana.

**Title 28
EDUCATION**

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

**Chapter 6. Endorsements to Existing Certificates
Subchapter C. All Other Teaching Endorsement Areas**

§673. School Library Service

A. - A.2.b. ...

c. elementary and/or secondary school library practice, three semester hours; or three years of successful experience as a school librarian.

NOTE: Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1822 (October 2006), amended LR 33:1618 (August 2007).

Weegie Peabody
Executive Director

0708#010

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

2006 Incorporation by Reference for Air Quality
(LAC 33:III.507, 2160, 3003, 5116,
5122, 5311, and 5901)(AQ284ft)

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 has amended the Air regulations, LAC 33:III.507, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ284ft).

This rule is identical to federal regulations found in 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, and 70.6.(a) (July 1, 2006); revisions to 40 CFR Parts 60, 61, and 63, in 72 FR 27437-27443 (May 16, 2007); and 40 CFR Part 63, Subpart HH, in 72 FR 26 (January 3, 2007), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

The rule incorporates by reference (IBR) into the Air regulations, LAC 33:Part III, the following federal regulations in the July 1, 2006, edition of the Code of Federal Regulations (CFR): 40 CFR Part 51, Appendix M, Capture Efficiency Test Procedures; 40 CFR Part 60, New Source Performance Standards; 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP); 40 CFR Part 63, NESHAP for Source Categories; 40 CFR Part 68, Chemical Accident Prevention and Minimization of Consequences; and 40 CFR 70.6(a), Part 70 Operating Permits Program. The rule also incorporates revisions to 40 CFR Parts 60, 61, and 63, in 72 FR 27437-27443 (May 16, 2007). No new Subparts for 40 CFR Part 60, 61, or 63 are added in the IBR of the July 1, 2006, edition of the CFR, or revisions on May 16, 2007. Any exception to the IBR is explicitly listed in the regulations. The rule also incorporates by reference the federal provisions for area (minor) sources in NESHAP from Oil and Natural Gas Facilities, 40 CFR Part 63, Subpart HH, using the Federal Register notice for the final federal rule, 72 FR 26 (January 3, 2007). This federal rule was not included in the July 1, 2006, edition of the CFR. In order for Louisiana to maintain equivalency with federal regulations,

certain regulations in the most current CFR, July 1, 2006, must be adopted into the Louisiana Administrative Code (LAC). This rulemaking is necessary to maintain delegation authority granted to Louisiana by the Environmental Protection Agency. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

A. - B.1. . . .

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2006. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. . . .

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:1619 (August 2007).

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43—Capture Efficiency Test Procedures

[Editor's Note: This Subchapter was moved and renumbered from Chapter 61 (December 1996).]

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2006, are hereby incorporated by reference.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:809 (May 2006), LR 33:1619 (August 2007).

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

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2006, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 60, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

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

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

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2006, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 61, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443.

40 CFR Part 61	Subpart/Appendix Heading

[See Prior Text in Subpart A – Appendix C]	

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:809 (May 2006), LR 33:1620 (August 2007).

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

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

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2006, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 63, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443, applicable to major sources.

B. - C.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007).

Chapter 53. Area Sources of Toxic Air Pollutants

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

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

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

Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2006, and specifically listed in the following table, are hereby incorporated by reference as they apply to area sources in the state of Louisiana. Also incorporated by reference are the revisions to 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Facilities, applicable to area sources, promulgated on January 3, 2007, in the *Federal Register*, 72 FR 26, and revisions to 40 CFR Part 63, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443, applicable to area sources.

Secretary, Legal Affairs Division, LR 32:810 (May 2006), LR 33:1621 (August 2007).

Herman Robinson, CPM
Executive Counsel

0708#026

RULE

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

**CAIR NO_x Annual and Ozone Season Trading Programs
(LAC 33:III.506)(AQ285)**

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 has amended the Air regulations, LAC 33:III.506 (Log #AQ285).

This rule defines the state's methodology under the Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO_x) Annual and Ozone Season Trading Programs for allocating NO_x allowances to electrical generating units (EGUs) subject to CAIR. Section 51.123 of the federal CAIR allows states some flexibility in implementation of certain rule provisions related to methods for allocating NO_x allowances. This rule substitutes for 40 CFR Part 97, Subpart EE (CAIR NO_x Allowance Allocations), §97.141 and §97.142, and for 40 CFR Part 97, Subpart EEEE (CAIR NO_x Ozone Season Allowance Allocations), §97.341 and §97.342. This rule concurrently revises the Louisiana State Implementation Plan for air quality.

The CAIR was promulgated by the U.S. EPA on May 12, 2005. The federal rule addresses ozone and fine particulate air pollution by regulating emissions of sulfur dioxide (SO₂) and NO_x from EGUs in certain states and the District of Columbia. The federal rule establishes a budget cap for each state for emissions of these pollutants and allows for emissions trading. Following promulgation of CAIR in 2005, EPA promulgated a Federal Implementation Plan (FIP) for the rule on April 28, 2006. The FIP, which became effective on June 27, 2006, includes the federal methodology for allocation of NO_x allowances. The FIP provides states with an option to submit an abbreviated State Implementation Plan (SIP), and some limited flexibility in implementation of certain federal rule provisions related to CAIR. Louisiana will remain under the provisions of the FIP for the CAIR NO_x annual and ozone season trading programs with the exception of the provisions established in this rule. Without this rule, the state would remain under the allocation method as set forth in the FIP.

To determine the impact of CAIR implementation on Louisiana electricity ratepayers, DEQ requested assistance from the Louisiana Public Service Commission (LPSC). Pursuant to this request, the LPSC contracted for the service of the Louisiana State University Center of Energy Studies. Recommendations concerning the implementation of CAIR

40 CFR Part 63	Subpart/Appendix Heading
* * *	
[See Prior Text in Subpart A – Subpart T]	
Subpart X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
Subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Facilities
Subpart EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
* * *	
[See Prior Text in Subpart LLL – Subpart IIIII]	

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007).

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2006.

B. - C.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), LR 31:1570 (July 2005), amended by the Office of the

in Louisiana were provided to DEQ from the LPSC in the "Staff Report" and "Supplement to Primary Staff Recommendations." The provisions of this rule are consistent with the LPSC recommendations. This rule will be submitted to EPA as a revision to the air quality SIP for Louisiana. The submittal of an approvable abbreviated SIP revision for the CAIR NO_x annual and ozone season trading programs will satisfy Louisiana's obligations under Section 110(a)(2)(D)(i) of the Clean Air Act (CAA). The basis and rationale for this rule are to improve air quality through a reduction of intrastate and interstate emissions of NO_x from EGUs subject to CAIR.

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

Title 33 ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§506. Clean Air Interstate Rule Requirements

A. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO_x) Annual Program. This Subsection is adopted in lieu of 40 CFR 97.141 and 97.142 as promulgated under the CAIR Federal Implementation Plan (FIP) NO_x Annual Trading Program on April 28, 2006, at 71 FR 25328. All provisions of 40 CFR Part 97, Subparts AA – HH, continue to apply, with the exception of §97.141 (Timing Requirements for CAIR NO_x Allowance Allocations) and §97.142 (CAIR NO_x Allowance Allocations). The provisions of this Subsection state how the CAIR NO_x annual allowances shall be allocated in accordance with this Section and 40 CFR 97.144(a).

1. Definitions. The terms used in Subsection A of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), except for those terms defined herein:

Certified Unit or Contract—an electricity-generating unit or contract that has been certified by the LPSC or approved by a municipal authority but was not in operation on, or approved by, December 31, 2004.

Department—the Louisiana Department of Environmental Quality.

LPSC—the Louisiana Public Service Commission.

LPSC or Municipal Certification—the process under which the LPSC certifies, or the relevant municipal authority approves, an electricity-generating facility and/or all of its component units, additions, and up-rated or re-powered units as being in the public convenience and necessity. This process includes the certification or approval of long-term contracts that dedicate a portion of the electrical output of any generation facility to a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

Municipal Authority—a municipal corporation, public power authority, or other political subdivision including, but not limited to, the Louisiana Energy and Power Authority.

Non-Utility Unit—an electricity-generating unit that has not been certified by the LPSC or approved by a municipal authority, and that does not have an effective and active long-term contract with a utility unit. This includes, but is not limited to, units owned by independent power producers (IPPs) that are the owners or operators of electricity-generating units that produce electricity for sale, and *cogeneration units* as defined in 40 CFR Part 97.

Utility Unit—a certified unit that is in operation, a previously-operational certified unit, or a non-utility unit that has an effective and active long-term contract with a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

2. Allocation of CAIR NO_x Annual Allowances. Total NO_x allowances allocated per control period shall not be in excess of the CAIR NO_x annual budget as found in 40 CFR 97.140 (35,512 tons per control period from 2009-2014 and 29,593 tons per control period thereafter).

a. Non-Utility Units. For each CAIR non-utility unit, the NO_x allowances shall be equal to the average of the actual NO_x annual emissions of the three calendar years immediately preceding the year in which the control period allocations are submitted to the administrator. The actual NO_x annual emissions as reported in the emission inventory required by LAC 33:III.919 shall be used, except that the allowances submitted in 2007 shall use the actual NO_x emissions for calendar years 2002, 2003, and 2004. When data is not available in the emission inventory, data reported to the Federal Acid Rain Program shall be used. When actual reported NO_x annual emissions data are available for only two of the three calendar years immediately preceding the deadline for submission of the control period allocations, the average of the actual reported NO_x annual emissions data for those two years shall be used. When actual reported NO_x annual emissions data are available for only one of the three calendar years, the actual reported NO_x annual emissions data for that one year shall be used. When no actual reported NO_x annual emissions data for any of the three calendar years are available, no allocations shall be made under this Paragraph.

b. Certified Units. A certified unit subject to CAIR shall be allocated NO_x allowances for the control period in which the unit will begin operation, and for each successive control period, for which no NO_x allowances have been previously allocated until operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three calendar years of operating data immediately preceding the allocation submittal deadline, the converted heat input as calculated in Clause A.2.b.i or ii of this Section shall be used to allocate allowances for the unit. The certified unit shall be treated as a utility unit for the purposes of this allocation, except that converted heat input shall be used instead of adjusted heat input. Converted heat input is calculated as follows.

i. For a coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the

generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

ii. For a non-coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

c. Utility Units. The department shall allocate CAIR NO_x allowances to each CAIR utility unit by multiplying the CAIR NO_x budget for Louisiana (40 CFR 97.140), minus the allowances allocated under Subparagraph A.2.a of this Section, by the ratio of the adjusted baseline heat input of the CAIR utility unit and/or converted heat input of a certified unit to the total amount of adjusted baseline heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The adjusted baseline heat input (in MMBTU) used with respect to the CAIR NO_x annual allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period adjusted heat input for calendar years 2002, 2003, and 2004), with the control period adjusted heat input for each year calculated as follows.

(a). If the unit is coal-fired during a year, the unit's control period heat input for that year shall be multiplied by 100 percent.

(b). If the unit is oil-fired during a year, the unit's control period heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause A.2.c.i.(a) or (b) of this Section, the unit's control period heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period heat input, status as coal-fired or oil-fired, and total tons of NO_x emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

3. Timing Requirements for CAIR NO_x Annual Allowance Allocations

a. By April 30, 2007, the department shall submit to the administrator the CAIR NO_x annual allowance allocations, in a format prescribed by the administrator and

in accordance with Paragraph A.2 of this Section, for the control periods in 2009, 2010, and 2011.

b. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the department shall submit to the administrator CAIR NO_x annual allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph A.2 of this Section, for the control period in the fourth year after the year of the applicable deadline for submission under this Section.

B. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO_x) Ozone Season Program. This Subsection is adopted in lieu of 40 CFR 97.341 and 97.342 as promulgated under the CAIR Federal Implementation Plan (FIP) NO_x Ozone Season Trading Program on April 28, 2006, at 71 FR 25328. All provisions of 40 CFR Part 97, Subparts AAAA – HHHH, continue to apply, with the exception of §97.341 (Timing Requirements for CAIR NO_x Ozone Season Allowance Allocations) and §97.342 (CAIR NO_x Ozone Season Allowance Allocations). The provisions of this Subsection state how the CAIR NO_x ozone season allowances shall be allocated in accordance with this Section and 40 CFR 97.343(a).

1. Definitions. The terms used in Subsection B of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), and in Paragraph A.1 of this Section.

2. Allocation of CAIR NO_x Ozone Season Allowances. Total NO_x ozone season allowances allocated per control period shall not be in excess of the CAIR NO_x ozone season budget as found in 40 CFR 97.340 (17,085 tons per control period from 2009-2014 and 14,238 tons per control period thereafter).

a. Non-Utility Units. For each CAIR non-utility unit, the NO_x allowances shall be equal to the average of the actual NO_x ozone season emissions of the three calendar years immediately preceding the year in which the control period allocations are submitted to the administrator. The actual NO_x ozone season emissions as reported in the emission inventory required by LAC 33:III.919 shall be used, except that the allowances submitted in 2007 shall use the actual NO_x emissions for calendar years 2002, 2003, and 2004 that were reported to the Federal Acid Rain Program. When data is not available in the emission inventory, data reported to the Federal Acid Rain Program shall be used. When actual reported NO_x ozone season emissions data are available for only two of the three calendar years immediately preceding the deadline for submission of the control period allocations, the average of the actual reported NO_x ozone season emissions data for those two years shall be used. When actual reported NO_x ozone season emissions data are available for only one of the three calendar years, the actual reported NO_x ozone season emissions data for that one year shall be used. When no actual reported NO_x ozone season emissions data for any of the three calendar years are available, no allocations shall be made under this Paragraph.

b. Certified Units. A certified unit subject to CAIR shall be allocated NO_x allowances for the ozone season of the control period in which the unit will begin operation, and for each successive ozone season in a control period, for which no NO_x allowances have been previously allocated until ozone season operating data are available for the three

calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three years of ozone season operating data preceding the allocation submittal deadline, the converted heat input as calculated in Clause B.2.b.i or ii of this Section shall be used to allocate ozone season allowances for the unit. The certified unit shall be treated as a utility unit for purposes of this allocation, except that ozone season converted heat input shall be used instead of ozone season adjusted heat input. Ozone season converted heat input is calculated as follows.

i. For a coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.

ii. For a non-coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.

c. Utility Units. The department shall allocate CAIR NO_x ozone season allowances to each CAIR utility unit by multiplying the CAIR NO_x ozone season budget for Louisiana (40 CFR 97.340), minus the allowances allocated under Subparagraph B.2.a of this Section, by the ratio of the ozone season adjusted baseline heat input of the CAIR utility unit and/or converted heat input of a certified unit to the total amount of ozone season adjusted baseline heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The ozone season adjusted baseline heat input (in MMBTU) used with respect to the CAIR NO_x ozone season allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period ozone season adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period ozone season adjusted heat input for calendar years 2002, 2003, and 2004), with the control period ozone season adjusted heat input for each year calculated as follows.

(a). If the unit is coal-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 100 percent.

(b). If the unit is oil-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause B.2.c.i.(a) or (b) of this Section, the unit's control period ozone season heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period ozone season heat input, status as coal-fired or oil-fired, and total tons of NO_x ozone season emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

3. Timing Requirements for CAIR NO_x Ozone Season Allowance Allocations

a. By April 30, 2007, the department shall submit to the administrator the CAIR NO_x ozone season allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph B.2 of this Section, for the control periods in 2009, 2010, and 2011.

b. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the department shall submit to the administrator the CAIR NO_x ozone season allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph B.2 of this Section, for the control period in the fourth year after the year of the applicable deadline for submission under this Section.

C. - E. ...

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 32:1597 (September 2006), amended LR 33:1622 (August 2007).

Herman Robinson, CPM
Executive Counsel

0708#027

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Hazardous Waste Corrections
(LAC 33:V.109, 305, 323, 517, 2309, 3013,
3719, 4339, 4357, 4501, and 4901)(HW097)

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 has amended the Hazardous Waste regulations, LAC 33:V.109, 305, 323, 517, 2309, 3013, 3719, 4339, 4357, 4501, and 4901 (Log #HW097).

This rule makes minor corrections to several sections of the hazardous waste regulations. The corrections include missing and out-of-place words, incorrect citations, formatting errors, missing capitalizations, and a modified definition. These corrections must be made to ensure the hazardous waste regulations are not misinterpreted. The definition of groundwater is being modified to ensure consistency throughout the Environmental Quality

regulations. The basis and rationale for this rule are to ensure the proper management of hazardous waste.

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

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality— Hazardous Waste

Chapter 1. General Provisions and Definitions

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Groundwater—water located beneath the ground surface or below a surface water body in a saturated zone or stratum.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007).

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§305. Scope of the Permit

A. - D.2.e. ...

f. submits a complete report within five days of receiving any hazardous waste on an unmanifested basis;

g. complies with all recordkeeping requirements of LAC 33:V.Subpart 1; and

D.2.h. - H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 13:433 (August

1987), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 23:567 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1105 (June 1998), LR 24:1690, 1759 (September 1998), LR 25:435 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:708 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3116 (December 2005), LR 33:1625 (August 2007).

§323. Suspension, Modification or Revocation and Reissuance, and Termination of Permits

A. ...

B. If the administrative authority decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the administrative authority may be appealed to the Department of Environmental Quality (DEQ), Legal Affairs Division, in accordance with R.S. 30:2050.21.

1. - 4.e. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 14:790 (November 1988), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2467 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2454 (October 2005), LR 33:1625 (August 2007).

Chapter 5. Permit Application Contents

Subchapter C. Permit Applications: Parts I and II

§517. Part II Information Requirements (the Formal Permit Application)

The formal permit application information requirements presented in this Section reflect the standards promulgated in LAC 33:V.Subpart 1. These information requirements are necessary in order to determine compliance with all standards. Responses and exhibits shall be numbered sequentially according to the technical standards. The permit application must describe how the facility will comply with each of the sections of LAC 33:V.Chapters 15-37 and 41. Information required in the formal permit application shall be submitted to the administrative authority and signed in accordance with requirements in LAC 33:V.509. The description must include appropriate design information (calculations, drawings, specifications, data, etc.) and administrative details (plans, flow charts, decision trees, manpower projections, operating instructions, etc.) to permit the administrative authority to determine the adequacy of the hazardous waste permit application. Certain technical data, such as design drawings, specifications, and engineering studies, shall be certified by a Louisiana registered professional engineer. If a section does not apply, the permit application must state it does not apply and why it does not apply. This information is to be submitted using the same numbering system and in the same order used in these regulations:

A. - T.4.c. ...

i. delineates the extent of the plume on the topographic map such as required under LAC 33:V.515.A.15; and

T.4.c.ii. - W. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 13:433 (August 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), LR 24:1691 (September 1998), LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1465 (August 1999), LR 25:1799 (October 1999), repromulgated LR 26:1608 (August 2000), repromulgated LR 26:2003 (September 2000), amended LR 27:287 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1625 (August 2007).

Chapter 23. Waste Piles

§2309. Monitoring and Inspection

A. - B.1. ...

2. proper functioning of wind dispersal control systems, where present;

3. the presence of leachate in and proper functioning of leachate collection and removal systems, where present. Leachate must be disposed of properly; and

B.4. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1626 (August 2007).

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3013. Standards to Control Metals Emissions

A. - B.2.b.ii. ...

3. Terrain-Adjusted Effective Stack Height (TESH)

B.3.a. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:824 (September 1996), repromulgated LR 22:980 (October 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1741 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1626 (August 2007).

Chapter 37. Financial Requirements

Subchapter F. Financial and Insurance Instruments

§3719. Wording of the Instruments

A. A trust agreement for a trust fund as specified in LAC 33:V.3707.A or 3711.A or 4403.A or 4407.A must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

1. The wording of the trust agreement is as follows.

Trust Agreement

[See Prior Text in Trust Agreement]

A.2. - N.2, certification ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:47 (January 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1514 (November 1997), repromulgated LR 23:1684 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2493 (November 2000), amended by the Office of Environmental Assessment, LR 30:2023 (September 2004), LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2472 (October 2005), LR 33:1626 (August 2007).

Chapter 43. Interim Status

Subchapter C. Contingency Plan and Emergency Procedures

§4339. Purpose and Implementation of Contingency Plan

A. Interim status facilities must comply with LAC 33:V.1513.A.1 and 3.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1626 (August 2007).

Subchapter D. Manifest System, Recordkeeping, and Reporting

§4357. Operating Record

A. - B.2. ...

3. the estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1 of this Section:

Table 1. Units For Reporting	
Units of Measure	Code ¹
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds per Hour	J
Kilograms per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre-feet	A
Hectares	Q
Hectare-meter	F
British thermal units per Hour	I

¹ Single digit symbols are used here for data processing purposes.

4. - 16. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), LR 25:484 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1803 (October 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1626 (August 2007).

Subchapter M. Landfills

§4501. Closure and Post-Closure

A. ...

B. In the closure and post-closure plans, the owner or operator must address the following objectives and indicate how they will be achieved:

1. control pollutant migration from the facility via groundwater, surface water, and air;

2. control surface water infiltration, including prevention of pooling;

B.3. - D.8. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1627 (August 2007).

Chapter 49. Lists of Hazardous Wastes

[Comment: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).]

§4901. Category I Hazardous Wastes

A. - B.2.b.i.(c). ...

(d). high-rate aeration, which is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhancing biological activity, and:

(i). the unit employs a minimum of 6 hp per million gallons of treatment volume; and either

(ii). the hydraulic retention time of the unit is no longer than five days; or

(iii). the hydraulic retention time is no longer than 30 days, and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic;

ii. generators and treatment, storage, and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage, and disposal facilities must maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(a). the unit is an aggressive biological treatment unit as described in Clause B.2.b.i of this Section; and

(b). the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

B.2.c. - G, Table 6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:1627 (August 2007).

Herman Robinson, CPM
Executive Counsel

0708#028

RULE

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

Peace Officer Training (LAC 22:III.4771)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 40:905 et seq., which is the Administrative Procedure Act, the Peace Officer Standards and Training Council hereby promulgate rules and regulations relative to the training of peace officers.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

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

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4771. Emergencies and/or Natural Disasters

A. All previously certified and registered peace officers who have retired from full time law enforcement service for five years or more will be granted the authority to serve as "provisional peace officers" for the agency from which they retired during a state of emergency within a declared emergency zone. The provisional peace officer applicant must successfully qualify with his/her duty weapon as soon as possible with a P.O.S.T. certified firearms instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 33:1627 (August 2007).

Michael A. Ranatza
Executive Director

0708#001

RULE

**Office of the Governor
Division of Administration
Board of Cosmetology**

Cosmetology (LAC 46:XXXI.309, 321, and 701)

The Louisiana State Board of Cosmetology, under authority of the Louisiana Cosmetology Act, R.S. 37:561-607, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended certain Rules regarding examination of applicants, responsibilities of students and safety and sanitation requirements.

The revisions are necessary to make requirements regarding all applicants for examination uniformed, to provide establish the procedure for use of hours earned in a cosmetology school without completion of the program and to establish safety and sanitation requirements.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXI. Cosmetologists

Chapter 3. Schools and Students

§309. Examination of Applicants

A. - E. ...

F. All applicants must wear solid black or white colored garments as outlined in §321.C while testing.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(4) and R.S. 37:586.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003), amended LR 32:834 (May 2006), LR 33:1628 (August 2007).

§321. Responsibilities of Students

A. - C. ...

D. Hours. Student hours shall become invalid six years after the date the hours were earned.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003), amended LR 29:2781 (December 2003), LR 32:835 (May 2006), LR 33:1628 (August 2007).

Chapter 7. Safety and Sanitation Requirements

§701. Sanitation Requirements for Cosmetology

Salons and Cosmetology Schools

A. - Q. ...

R. Prohibited equipment and substances. No beauty shop, salon or cosmetology school shall permit the use of and no individual licensed by the board shall use the following in the performance of cosmetology:

1. credo blades or any blade designed for the removal of multiple layers of skin;

- 2. formaldehyde for sanitization of equipment; or
- 3. nail enhancement products containing methyl methacrylate (MMA) monomer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003), amended LR 29:2781 (December 2003), LR 32:835 (May 2006), LR 33:1628 (August 2007).

Jackie Burdette
Executive Director

0708#083

RULE

**Office of the Governor
Office of Financial Institutions**

Louisiana International Banking
(LAC 10:III.1101 and 1103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and as authorized by R.S. 6:551.7 and 6:551.24, the Commissioner of the Office of Financial Institutions has promulgated a Rule to provide for the administration and regulatory oversight of the Louisiana International Banking Statutes (R.S. 6:551.1 et seq.). The Rule establishes fees and assessments to cover anticipated regulatory costs.

Title 10

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC**

Part III. Banking

Chapter 11. Louisiana International Banking

§1101. General Provisions

A. The Depository Institutions' Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered depository institutions for services rendered. All fees detailed in this rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may request that a reduced fee be charged for the simultaneous filing of multiple applications. This privilege will not be afforded to applications that are not expected to be consummated within 12 months of the filing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:551.7 and 6:551.24.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1628 (August 2007).

§1103. Fees and Assessments

A. Pursuant to the authority granted under R.S. 6:551.7 and 6:551.24, the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the International Banking Statutes, R.S. 6:551.1 et seq.

Description	Fee
Application for a foreign bank, bank holding company, or financial holding company, to establish and operate a subsidiary bank in Louisiana.	\$10,000

Description	Fee
Application for a foreign bank to establish and operate a branch, an international banking facility, a representative office, or an agency in Louisiana.	\$2,000
Application for a U.S. bank or foreign bank to organize or acquire a subsidiary to engage in international banking activities specifically authorized in the Edge Act or to operate as an agreement corporation.	\$2,000
Application for a foreign bank to establish and operate an administrative office in Louisiana.	\$1,000
Examination fee for each foreign bank, branch, agency, representative office, international banking facility, administrative office, or Edge Act subsidiary operating in Louisiana. Fee per examiner.	\$50 per hour
Examination fee for each branch, agency, representative office, international banking facility, administrative office, or Edge Act subsidiary of an out-of-state foreign bank. This fee shall be billed to the primary state regulator of the out-of-state foreign bank being examined, and due upon receipt of the OFI invoice.	The greater of \$50 per hour per examiner or the actual expenses incurred by this office to conduct or assist in conducting such examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:551.7 and 6:551.24.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1628 (August 2007).

John Ducrest, CPA
Commissioner

0708#022

RULE

Office of the Governor Office of Financial Institutions

Residential Group Common Bonds and Associational Groups (LAC 10:IX.Chapter 5)

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 6:641 et seq., (Louisiana Credit Union Law) the Commissioner of the Office of Financial Institutions promulgates a Rule to establish prudential standards to be used in reviewing an application by a Louisiana state-chartered credit union for a residential group common bond within a well-defined neighborhood, small community, or rural district; and adding associational groups. The Rule defines relative terms, establishes safety and soundness criteria, establishes the application process, as well as other necessary guidance.

Pursuant to Section 645(B) of the Louisiana Credit Union Law, a state-chartered credit union may be organized within groups that have a common bond of residence within a well-defined neighborhood, a small community, or a rural district; or an occupation, or an association, or any combination thereof. Each application must satisfy all statutory requirements, comply with the provisions of this Rule, adhere to prudent safety and soundness criteria, and clearly identify the existence of mutual interest or commonality

between persons sharing the proposed residential group common bond.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part IX. Credit Unions

Chapter 5. Criteria to Organize within Residential Groups, and Add Associational Groups

§501. Definitions

A. As used in this Rule, and unless the content details otherwise, the following definitions apply.

Application—those documents submitted in a form acceptable to the commissioner, along with all supporting information, requesting approval of a bylaw amendment that provides for a residential group common bond.

Association—those individuals (natural persons) and/or groups (non natural persons) whose members participate in specific activities, share common goals and purposes; possess a charter, bylaws, or any other equivalent documentation that contains a specific definition of who is eligible for membership; conduct periodic meetings open to all members; and sponsor other activities which demonstrate that the members of the group meet to accomplish the goals and objectives of the association.

Commissioner—the Commissioner of the Office of Financial Institutions.

Field of Membership (FOM)—those persons and entities eligible for membership in the credit union.

LOFI—Louisiana Office of Financial Institutions.

Low Income Area—an area that includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

a. an area that wholly consists of or is wholly located within an empowerment zone or enterprise community in the state of Louisiana designated under Section 1391 of the IRC;

b. an area where the percentage of the population living in poverty is at least 20 percent;

c. an area in a metropolitan area where the median family income is at or below 80 percent of the metropolitan area median family income or the Louisiana median family income, whichever is greater;

d. an area outside of a metropolitan area, where the median family income is at or below 80 percent of the state-wide non-Metropolitan area median family income, whichever is greater;

e. an area where the unemployment rate is at least 1.5 times the national average;

f. an area meeting the criteria for economic distress that may be established by the CDFIs of the U.S. Treasury Department.

Residence Within—to live within a well-defined neighborhood, small community, or rural district.

Residential Group Common Bond—a common bond created by residence within a well-defined neighborhood, small community, or rural district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1629 (August 2007).

§503. Well-Defined Neighborhood, Small Community, and Rural District

A. *Well-Defined Neighborhood* shall mean a specified small part of a geographic area considered in regard to its residents or distinctive characteristics, specified by name, and must be described in writing.

1. Boundaries may be defined by streets, roads, or other delineations including boundaries of a municipality (such as the city limits) or other boundaries that reasonably demonstrate the end of one well-defined neighborhood and the beginning of another. For example, a written description typically will include the names of streets or other delineations surrounding the well-defined neighborhood.

2. Boundaries of a well-defined neighborhood may be defined as a small part of a municipality. Indicators of unifying characteristics may include, but are not limited to, recreation centers or athletic facilities, social clubs or organizations, neighborhood associations, or similar facilities or functions.

3. A written description of a well-defined neighborhood must demonstrate a viable residential common bond based upon its size, its level of activity, and safety and soundness criteria related to service of the proposed area.

B.1. *Small Community* shall mean an area where residents share common political, environmental, geographical, or economic characteristics that tend to create a mutual interest or, residents share common facilities or services such as an education or transportation system, recreational or cultural facilities, government, medical services, newspaper, fire or police protection, public utilities and services or other unifying characteristics that tend to create interaction or mutual interest. A small community must be described in writing and delineated on a map.

2. A single municipality or parish may qualify as a small community if a mutual interest can be properly documented. A credit union must demonstrate that it has or will establish, within two years, adequate facilities and staffing to serve the individuals that reside in the requested small community, including individuals residing in low income areas of the small community that have insufficient access to affordable (or non-predatory) financial services. In order to do so, a credit union must submit a business plan to the commissioner specifying how it will serve individuals in the small community, including individuals that reside in low income areas. The business plan must detail the credit and depository needs of the small community and address how a credit union plans to serve those needs. A credit union will also be expected to regularly review the business plan to determine if the small community is being adequately served. The commissioner may request periodic "service" status reports from a credit union to ensure that the needs of the small community, including individuals that reside in low income areas, are being met in an appropriate manner. The commissioner may also request such a report before allowing a credit union to further expand its field of membership.

C. *Rural District* shall mean an area that is outside a Metropolitan Statistical Area (MSA) as those areas are established from time to time by the United States Office of Management and Budget. It may also be represented by sharing common political characteristics or facilities such as utilization of a single police jury, election district, water

district, or similar governing authority. A rural district must be described in writing and be delineated on a map. A rural district may encompass a larger geographic area than a small community, if the area is demonstrated to have certain commonalities of interest. However, a rural district may not include multiple parishes.

D. Typically, the boundaries of a small community or rural district will be defined by streets and roads but may also be bounded by other delineations including boundaries of a town, municipality (such as the city limits), or other boundaries that reasonably demonstrate the end of one small community or rural district and the beginning of another. In many cases, it may be more appropriate to describe the small community or rural district by means of a map rather than listing all delineations that comprise its border. If the written description is so limited, a well drawn map may be needed to readily facilitate a determination that a prospective member qualifies for membership based upon residence within a well-defined area being served.

E. More than one credit union may be approved to serve the same residential group common bond.

F. The credit union must demonstrate that it has or will have adequate facilities and staffing to serve the requested residential group.

G. Various groups that have a common bond of residence may be combined in the same field of membership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1630 (August 2007).

§505. Residential Group Common Bond

A. The applying credit union must demonstrate by the weight and accumulation of facts presented that a residential group common bond has unifying characteristics that clearly meet the applicable definition(s). The commissioner will consider the volume and value of evidence in establishing the commonality criteria to meet the definitions for a well-defined neighborhood, small community, or rural district common bond.

B. Safety and Soundness Criteria

1. Credit unions are subject to safety and soundness criteria based on the financial and managerial capacity of the credit union to serve the proposed field of membership. The commissioner will not approve any application unless the credit union can meet the criteria set forth in this Rule.

2. The following criteria may be considered in determining the financial and managerial capacity of a credit union to support a request for a residential group common bond.

a. A composite CAMEL rating of "1" or "2" was assigned at the most recent examination.

b. Any credit union receiving a CAMEL rating of "3" in any component area at its most recent examination shall be considered only after review of the following additional factors:

i. the underlying reasons for ratings outside the criteria in Subparagraph a above;

ii. the overall condition of the credit union and ability to support expanded activities;

iii. management's progress and commitment to improve such ratings; and

iv. the prospects for improving performance and ratings in the near term.

c. Credit unions with any CAMEL component rating more severe than a "3" in its most recent report of examination may not apply for a residential group common bond based on residence in a well defined neighborhood, small community, or rural district.

d. Credit Unions with a Composite CAMEL rating of "3", or more severe, may not apply for a residential group common bond until the overall condition of the credit union is restored to a satisfactory level.

e. The credit union must demonstrate in its application for a residential group common bond that it has a sufficient level and depth of management to meet the requirements of the residential common bond proposed.

f. The credit union must demonstrate in its application for a residential group common bond that it has sufficient data processing resources and capacity to serve the residential group that is being proposed.

g. If the commissioner deems it appropriate, he may require the credit union to submit a comprehensive business/strategic plan that addresses the following:

i. how the credit union intends to service the targeted well-defined neighborhood , small community, or rural district;

ii. a list of the financial services that will be provided to the targeted well-defined neighborhood, small community, or rural district;

iii. a projection of the expected size and penetration into the target market over a three year period, including an analysis of the market's current financial service providers;

iv. the impact of the proposed expansion upon the credit union's capital, property and equipment (including technology resources), and personnel resources;

v. the adequacy and sufficiency of fixed assets and data processing facilities to meet the expected levels of growth;

vi. the effect upon management's ability to recognize, monitor, and control all types of risks including, but not limited to, the following: audit, interest rate, liquidity, transaction, compliance, strategic, and reputation.

vii. a comprehensive income statement budget and proforma balance sheet reflecting realistic financial, capital, and operating goals for the next three calendar years beyond the year in which the field of membership expansion is requested.

3. If the commissioner deems it appropriate, he may require that the credit union submit revised loan and collection policies and procedures that recognize the additional complexities of a residential group common bond.

4. If the commissioner deems it appropriate, he may require that the credit union provide adequate policies related to asset/liability management, recognizing the additional complexities that could result from expanded lending and deposit taking activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1630 (August 2007).

§507. Applications

A. A residential group common bond request shall be submitted to the commissioner on the form(s) provided by the LOFI; and include the proposed amendment to the credit union's bylaws in accordance with Section 665 of the Louisiana Credit Union Law. In reviewing the application, the commissioner may consider:

1. whether the well-defined neighborhood, small community, or rural district has adequate unifying characteristics or a mutual interest such that the safety and soundness of the institution, and protection of the funds invested by members, is maintained;

2. service by the credit union that is responsive to the needs of prospective members, to promote thrift and create a source of credit at reasonable rates;

3. protection for the interest of current and future members of the credit union; and

4. the encouragement of economic progress in the state by allowing the opportunity to expand services and facilities; and

5. the purpose and/or intent of the Louisiana Credit Union Law.

B. The applicant credit union shall have the burden to show the commissioner such facts and data that support the requirements and considerations in these rules and/or any existing or future policies and procedures issued by LOFI in connection with the same and/or the Louisiana Credit Union Law.

C. The financial and managerial capacity of a credit union shall be an important consideration for the commissioner in approving any residential group common bond. The credit union must demonstrate that the size, capability, and experience of its management is adequate to meet the demands of the residential group proposed.

D. The applicant credit union shall submit a comprehensive strategic and ongoing business plan that addresses the services to be provided, impact on the credit union's capital and resources, adequacy of fixed assets and data management facilities, and ability of management to recognize, monitor and control risk.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1631 (August 2007).

§509. Public Policy

A. In order to protect the interests of current and future members of the credit union, to be responsive to the needs of the membership for financial services, to encourage further economic growth in the state of Louisiana, and to foster the development of credit unions under a dual chartering system in the state of Louisiana pursuant to Section 641.1 of the Louisiana Credit Union Law, groups that are within the field of membership of the credit union prior to application for a residential group common bond shall be considered to remain within the FOM of the credit union, after the approval of a residential group common bond.

B. Upon application for a residential group common bond, the goal of the credit union shall be to adequately serve the residential area that may be approved by the commissioner, as well as any other group(s) included in its FOM.

C. In approving any further expansion of a credit union's field of membership, the commissioner may give consideration to its rate of market penetration and other pertinent criteria to determine if the credit union is properly and adequately serving the FOM in the residential area as projected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1631 (August 2007).

§511. Mergers

A. A credit union serving a residential group common bond may merge with another credit union, pursuant to Section 646(A)(2) of the Louisiana Credit Union Law, if the proposed merger neither creates a safety and soundness concern nor violates any other section of the Louisiana Credit Union Law. Credit unions must meet the safety and soundness criteria for a merger, and the continuing credit union must demonstrate that it can reasonably serve its members and the members of the credit union being merged. The plan of merger must also specifically indicate that the new FOM will be comprised of the combination of membership groups of the two credit unions.

B. In any merger involving a credit union serving a residential group common bond, the surviving credit union will be subject to the conditions of this rule. While the surviving credit union may continue to serve members of the merging credit union, no additional expansion will be allowed that does not comply with this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§513. Adding Associational Groups

A. Pursuant to his authority under the Louisiana Credit Union Law and the stated purpose of the same, the commissioner has determined that, if there are no safety and soundness concerns, it is appropriate to allow expansions of a credit union's FOM involving members and employees of an association in accordance with Sections 645(B) and 646(A)(2)(b) of the Louisiana Credit Union Law. At a minimum, the commissioner may consider the following when assessing an application to add an associational group to a credit union's FOM:

1. whether the group meets the definition of an association as contained in this Rule;
2. whether members pay dues;
3. whether members have voting rights;
4. whether the association maintains a membership list;
5. whether the association maintains separate books and records; and
6. the frequency of meetings and other group activities.

B. The association may not be created or organized by the credit union or any of its officials or employees. The association must be a separate, legal entity that maintains separate financial records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§515. Public Notification

A. Upon approval of a residential group common bond, the commissioner shall include the name of the credit union and a brief description of the well-defined neighborhood, small community, or rural district that has been approved in LOFI's next monthly bulletin, which is available on the OFI webpage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§517. Exceptions

A. Exceptions to this Rule and/or waivers of the requirements contained herein may be granted by the commissioner on a case-by-case basis. Any request for an exception and/or waiver must be submitted in writing and requires the written approval of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§519. Effective Date

A. This Rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§521. Severability

A. If any Section, term, or provision of this Rule, LAC 10:IX.501-519, is for any reason declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining Sections, terms, or provisions contained herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

John Ducrest, CPA
Commissioner

0708#021

RULE

Office of the Governor Recreational and Used Motor Vehicle Commission

Recreational and Used Motor Vehicles
(LAC 46:V.Chapters 27-36, 44, 47, and 48)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4A and 4B, the Office of the Governor, Recreational and Used Motor Vehicle Commission, notice is hereby given that the Recreational

and Used Motor Vehicle Commission has adopted the following rules and regulations governing Chapter 27, The Recreational and Used Motor Vehicle Commission; Chapter 28, Definitions; Chapter 29, Licenses to be Issued by the Recreational and Used Motor Vehicle Commission; Chapter 31, License for a Salesman; Chapter 35, Buyer Identification Card; Chapter 36, Recreational Products Trade Shows; Motor Vehicle Trade Shows and Off -Site Displays; Chapter 37, Changes to be Reported to Commission; Chapter 39, Business Transactions; Chapter 43, License Renewal; Chapter 44, Educational Seminar; Chapter 45, Complaints; Chapter 47, Procedure for Adjudications before the Recreational and Used Motor Vehicle Commission; Chapter 48, Uniform Procedures to Designate the Territory Assigned to a Marine Dealer; and Chapter 49, Independent Marine Surveyor; and adopt proposed rules and regulations §4710 governing Hearing Procedures for Hearings on Cease and Desists Orders in accordance with R.S.786(D)(1).

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part V. Automotive Industry

Subpart 2. Recreational and Used Motor Vehicles

Chapter 27. The Recreational and Used Motor Vehicle Commission

§2701. Meetings of the Commission

A. - B. ...

C. A public comment period shall be held at or near the beginning of each board meeting. Persons desiring to present public comments shall notify the board chairman no later than 48 hours prior to the date of the regular meeting and 72 hours prior to the date of a special meeting. All written requests to have an item or items placed on the agenda must indicate, in detail, what items they wish to discuss. Public discussions are limited only to items on the agenda. There will be a maximum of 30 minutes for all public comments to be heard and each person will be limited to three minutes. Additional time can be allowed by the chairman as he deems reasonable. Each person making public comments shall identify himself and the group, organization or company he represents, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(E)(1) and R.S. 42:5.D.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 15:1058 (December 1989) LR 18:1116 (October 1992), LR 24:1682 (September 1998), LR 25:1792 (October 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2351 (November 2002), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1633 (August 2007).

§2703. Quorum of the Commission

A. Eight members of the commission shall constitute a quorum for the transaction of official business. Fewer than a quorum may adjourn the meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(A).

HISTORICAL NOTE: Promulgated by Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts

Commission, LR 15:258 (April 1989), LR 24:1682 (September 1998), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1633 (August 2007).

§2705. Executive Director

A. The Executive Director of the Louisiana Recreational and Used Motor Vehicle Commission shall be in charge of the commission's office and shall conduct and direct the activities thereof in the manner as directed by the commission. The employees of the commission shall report to the executive director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(D).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1633 (August 2007).

§2707. Correspondence with the Commission

A. ...

B. Louisiana Recreational and Used Motor Vehicle Commission forms, applications and dealer aids are recognized as the commission official forms for licensing and communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(E).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1633 (August 2007).

§2709. Official Seal

A. The official seal of the Louisiana Recreational and Used Motor Vehicle Commission shall be as follows. The outline of the state of Louisiana with a small star denoting the approximate location of Baton Rouge, which name appears to the left of the star. It shall be bordered by the inscription, Louisiana Recreational and Used Motor Vehicle Commission.

B. The executive director shall be the custodian of the official seal and shall affix the imprint or the facsimile thereof to all license certificates issued by the Louisiana Recreational and Used Motor Vehicle Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(D)(4).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1633 (August 2007).

Chapter 28. Definitions

§2801. Definitions

A. The word *person* as used herein shall mean any natural or juridical person, firm, association, corporation, trust partnership, limited liability company or any other legal entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(D)(4).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1633 (August 2007).

Chapter 29. Licenses to be Issued by the Recreational and Used Motor Vehicle Commission

§2901. Dealers to be Licensed

A. ...

B. Automotive dismantlers and parts recyclers, motor vehicle crushers, and dealers in used parts and accessories.

C. Used motor vehicle auctions and salvage pools are considered used motor vehicle dealers and must comply with licensing regulations contained herein.

D. Dealers, manufacturers, and distributors of new recreational products as defined at R.S. 32:781(22).

E. Brokers of used motor vehicles, used parts, and recreational products are considered to be dealers and must comply with licensing regulations contained therein.

F. Any person who rents or who sells on a rent with option to purchase program used motor vehicles not of the current or immediate prior year or new and used recreational products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:784.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 24:1682 (September 1998), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission LR 30:436 (March 2004), repromulgated LR 30:792 (April 2004), LR 30:1477 (July 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1633 (August 2007).

§2903. Dealer Licenses

A. The dealer license will be issued in the legal name of the person as identified on the application for dealer license.

B. A dealer's license shall consist of a signed certificate bearing the official seal of the commission and the name and address of the dealership and assigned a dealer number, which shall be posted in a conspicuous place in the dealer's place or places of business.

C. Used motor vehicle dealers will be assigned a license number to be prefixed with a "UD" designation.

D. Automotive dismantlers and parts recyclers will be assigned a license number to be prefixed with a "AD" designation.

E. Crushers will be assigned a license number to be prefixed with a "CS" designation.

F. Dealers in used parts and accessories will be assigned a license number to be prefixed with a "UP" designation.

G. Beginning with licenses to be issued for 2008, dealers, manufacturers and distributors of recreational products will be assigned a license number to prefixed as follows.

- 1. Motorcycle and ATV Dealers MA
- 2. Marine Products Dealers MP
- 3. Recreational Vehicles Dealers RV
- 4. Utility Trailer Dealers UT
- 5. Manufacturers MS
- 6. Distributors DT

H. Beginning with licenses to be issued for 2008, dealers who rent or who sell on a rent with option to purchase program will be assigned a license number to be prefixed with a "RD" number.

I. Each said license shall stand on its own, and for each said license, the dealer shall pay a separate licensing fee.

J. The valid dealer's license permits the dealer to transfer and assign titles, purchase and sell used motor vehicles without paying Louisiana general sales tax.

K. A dealer who has multiple locations will be allowed from his salesman's license to sell at all locations owned by him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 784.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1634 (August 2007).

§2904. Additional Licensing, Requirements for the Automotive Dismantler and Parts Recycler and Used Parts and Accessories Dealers

A. Every automotive dismantler and recycler issued an automotive dismantler's license and number will be permitted to purchase and sell salvage vehicles and transfer motor vehicle titles for the purpose of dismantling and selling the parts thereof to include the salvaged vehicle with title.

B. An automotive dismantler and parts recycler may offer a rebuilt, wrecked, abandoned or repairable motor vehicle at wholesale only. If such vehicle is offered for sale at retail, the dismantler will be operating as a used motor vehicle dealer and is subject to licensing requirements and used motor vehicle dealer rules and regulations thereof. However, an automotive dismantler and parts recycler, duly licensed by the commission, shall have the authority to transfer the certificate of title as dealer under the Louisiana Certificate of Title Law, (i.e., transfer to another dealer without payment of tax). In order to sell a vehicle at retail, an automotive dismantler and parts recycle must be licensed hereunder as a used motor vehicle dealer providing a good and sufficient bond, executed by the applicant as principal by a surety company qualified to do business as surety in the sum of \$20,000.

C. At least one salesman's license shall be issued for each business. License fees charged and received by the commission shall be the same as for all other salesmen licensed by the commission as described in R.S. 781(33).

D. Used parts and accessories are broadly defined as any item removed from a used motor vehicle for the purpose of resale, except used batteries, wheel covers and hubcaps, and tires. Used parts and accessories do not include rebuilt or remanufactured parts and accessories.

E. License fees charged and received by the commission for licenses issued on dealers above shall be the same as for all other dealers licensed by this agency as is described in R.S.32:802(A).

F. At least one salesman's license shall be issued for each business. License fees charged and received by the commission shall be the same as for all other salesmen licensed by the commission as described in R.S. 32:802.

G. A surety bond will not be required for dealers whose principal business is selling used parts.

H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:802.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR

11:1063 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 20:535 (May 1994), promulgated LR 20:645 (June 1994), LR 24:1683 (September 1998), amended LR 25:245 (February 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), LR 33:1634 (August 2007).

§2905. Qualifications and Eligibility for Licensure

A. - A.1. ...

2. All dealers, except those who deal solely with trailers, are required to keep in force a garage liability insurance policy on all vehicles offered for sale or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial responsibility laws of the state. For those dealers who, in addition to selling vehicles, conduct the business of daily vehicle rentals, a separate renter's policy must be in effect.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission LR 15:258 (April 1989), LR 15:375 (May 1989), LR 24:1682 (September 1998), LR 25:245 (February 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:436 (March 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2480 (November 2004), LR 33:1635 (August 2007).

§2907. Established Place of Business

A. An established place of business shall mean a permanently enclosed building or structure either owned in fee, leased or rented, which meets local zoning or the municipal requirements, and regularly occupied by a person, firm or corporation, easily accessible to the public at which a regular business of selling used motor vehicles will be carried on in good faith; and, at which place of business shall be kept and maintained the books, records, and files necessary to conduct the business; and, shall not mean tents, temporary stands, lots, or other temporary quarters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1635 (August 2007).

Chapter 31. License for Salesman

§3101. Qualifications and Eligibility for Licensure

A. - B. ...

C. Upon termination of employment, the salesman license will be returned by the dealer to the office of the Recreational and Used Motor Vehicle Commission within 10 days.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781(33).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 25:245 (February 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), LR 33:1635 (August 2007).

Chapter 33. Automotive Dismantler and Recycler

§3301. License for Automotive Dismantler

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772.E.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1635 (August 2007).

§3303. Qualifications and Eligibility for Licensure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:752, 32:753, 32:754, 32:775 and 32:756, 32:772(E), and R.S. 32:773(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 20:535 (May 1994), repromulgated LR 20:645 (June 1994), LR 24:1683 (September 1998), amended LR 25:245 (February 1999), amended by Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1635 (August 2007).

§3305. Place of Business of an Automotive Dismantler and Recycler

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772.E(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1635 (August 2007).

Chapter 35. Buyer Identification Card

§3503. Qualifications and Eligibility for Buyer Identification Card

A. - A.1. ...

2. Completion of Official Recreational and Used Motor Vehicle Commission Application Forms. Payment of Louisiana state general sales tax is due on all vehicles purchased at a salvage pool or salvage disposal sale and applicant must certify that applicant will faithfully adhere to this requirement.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:808.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:259 (April 1989), LR 15:1058 (December 1989), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:1588 (July 2002), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), LR 33:1635 (August 2007).

Chapter 36. Recreational Products Trade Shows

Subchapter A. Recreational Products

§3601. Definitions

Exhibitor—a nonresident dealer who meets the definition of a recreational products dealer subject to license under R.S. 32:811(A), but holds a current dealer license in another state and whose Louisiana business is limited to

participation in vehicle trade shows or expositions in this state.

Manufacturer or Distributor—any person, resident or nonresident who fabricates, manufactures, or assembles new and unused vehicles or who in whole or in part maintains distributor representatives licensed under R.S.32:784.

Permit—a temporary license issued to a licensed used motor vehicle dealer, exhibitor, manufacturer or distributor, to display vehicles at a vehicle trade show or exposition. The permit issued shall be for the duration of the trade show only and shall not exceed 14 days.

Promoter—any person of Louisiana residence who alone or with others assumes the financial responsibility of a vehicle trade show or exposition in which vehicles are displayed by dealers, manufacturers or distributors, licensed under R.S. 32:784.

Recreational Products Dealer—any person subject to license under R.S. 32:784 and 811.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 16:113 (February 1990), amended LR 25:1792 (October 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1635 (August 2007).

§3603. License, Fees and Applications

A. Promoters of recreational products trade shows shall be required to obtain a license from the Louisiana Recreational and Used Motor Vehicle Commission and the license application shall consist of the following:

1. - 3. ...

4. a promoter shall also be required to obtain a permit for any trade show or exposition from the LRUMVC;

A.5 - B.5. ...

C. A recreational products dealer shall be required to obtain a permit to display recreational products in trade shows or expositions and consist of the following:

1. ...

2. A licensed recreational products dealer who participates in a recreational products show or exposition shall not be deemed to have an additional place of business at that show or exposition and shall not be charged any permit fees.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 16:113 (February 1990), amended LR 19:1021 (August 1993), LR 25:1792 (October 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1636 (August 2007).

§3605. Qualifications and Eligibility of Recreational Products Trade Shows

A. Promoters of recreational products trade shows or expositions in which a dealer, manufacturer, or distributor, which is required to be licensed under R.S. 32:784 and 811, displays vehicles, are required to obtain a permit from the LRUMVC no later than 60 days prior to the start date of the recreational products trade show and shall give the start date, ending date, location of the proposed trade show or exposition, and the type of vehicles to be promoted.

B. Within 10 days of the start of the event, the promoter shall also furnish a complete list of all licensed Louisiana dealers who will participate. This list shall also include the dealer's current dealer number.

C. A promoter may invite exhibitors to attend the trade show or exposition by providing proof to this commission that:

1. all Louisiana dealers, who are in Orleans or Jefferson Parish, who sell the type vehicles being promoted, starting within a thirty mile radius of the proposed location of the trade show or exposition, have been contacted and given the opportunity to attend and space is still available. A 50-mile radius of the proposed location of the trade show or exposition, have been contacted and given the opportunity to attend and space is still available;

2. all Louisiana dealers, who are not in Orleans or Jefferson Parish, who sell the type vehicles being promoted, starting within a 50 mile radius of the proposed location of the trade show or exposition, have been contacted and given the opportunity to attend and space is still available;

3. that the exhibitor invited is a greater distance away than a Louisiana dealer selling the same make, model or brand and that the Louisiana dealer has declined to attend; or

4. that the exhibitor invited will only display a make, model, or brand not sold by any Louisiana dealer.

D. - G. ...

H. Any promoter who violates any provisions of these rules and regulations shall be subject to the civil penalties under R.S. 32:788.

I. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 16:113 (February 1990), amended LR 19:1021 (August 1993), LR 25:1792 (October 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1636 (August 2007).

Subchapter B. Motor Vehicle Trade Shows and Off-Site Displays

§3606. Off-Site Displays—Marine Products

A. - F. ...

G. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:814(A)(7)(d) and will result in a minimum penalty of \$500 per vehicle, per display for the first offense.

H. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:1018 (May 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1636 (August 2007).

§3607. Off-Site Displays—Motorcycles, ATV's and RV's

A. - E. ...

F. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:814(A)(7)(d) and will result in a minimum penalty of \$500 per vehicle, per display for the first offense.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(E)(1).

HISTORICAL NOTE: Promulgated by the Office of Governor, Used Motor Vehicle and Parts Commission, LR 30:1019 (May

2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1636 (August 2007).

Chapter 44. Educational Seminar

§4401. Required Attendance

A. On or after January 1, 2005, every applicant for a license issued by the Recreational and Used Motor Vehicle Commission except those excluded by statute must attend a four-hour educational seminar approved and conducted by the Recreational and Used Motor Vehicle Commission.

1. The seminar will be conducted by employees of the Recreational and Used Motor Vehicle Commission and will be held at such place to be determined by the commission upon reasonable notice.

2. The seminar will be held once a month on a date and at a time to be determined by the commission upon reasonable notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791(B)(3), 802(D), 811(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2351 (November 2002), amended LR 30:436 (March 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1637 (August 2007).

§4403. Certification

A. Upon applying for a license from the commission, the applicant must attach a copy of the certificate of completion which documents that the dealership's general manager, office manager, title clerk or other responsible representative of the dealership has attended the four-hour educational seminar. If the applicant has not completed the educational seminar, he must provide evidence that he has registered to attend such seminar within 60 days after issuance of the license.

B. The certificate shall list the participant's name, name and address of the dealer, date of completion and signature of instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791(B)(3), 802(D), 811(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2351 (November 2002), amended LR 30:436 (March 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1637 (August 2007).

§4405. Educational Program

A. The educational seminar will consist of information pertaining to the Recreational and Used Motor Vehicle Commission, Department of Revenue, Office of Motor Vehicles, Wildlife and Fisheries, Motor Vehicle Commission and Attorney General's Office. The items to be reviewed are as follows:

1. LRUMVC—background of the agency, laws, rules and regulations, license requirements, area of responsibility, complaint procedures, and non-delivery of titles;

2. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791(B)(3), 802(D), 811(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2352 (November 2002), repromulgated LR 28:2511 (December 2002), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1637 (August 2007).

Chapter 47. Procedure for Adjudications before the Recreational and Used Motor Vehicle Commission

§4701. Hearing Officer

A. - B.4. ...

5. shall issue and enforce subpoenas in accordance with R.S. 32:785;

6. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1221 (July 2006), amended LR 33:1637 (August 2007).

§4707. General Provisions on Hearings

A. Notice of Hearing. The notice of hearing shall comply with the requirements of R.S. 32:785(C) and R.S. 49:955.

B. - D. ...

E. Subpoenas

1. Subpoenas shall be issued in accordance with R.S. 32:785(C)(3).

E.2. - F.5.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1222 (July 2006), amended LR 33:1637 (August 2007).

§4709. Hearings on Application Appeals

A. Any person whose application for license has been denied in accordance with R.S. 32:785(A)(1) shall be provided written notice by certified or registered mail that the application has been denied, the grounds for which the application has been denied and that the applicant has the right to appeal to the commission by making a written request for the appeal within 30 days following the receipt of the denial. No appeals will be considered beyond 30 days from receipt of the denial.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1222 (July 2006), amended LR 33:1637 (August 2007).

§4710. Hearings on Cease and Desist Orders

A. A rule to show cause why a cease and desist order should not be issued shall be made in accordance with R.S. 786(D)(1), and the notice shall be provided at least 10 days prior to the hearing either by certified or registered mail or by actual service made by a field investigator.

B. An interlocutory cease and desist order shall only be issued by the hearing officer based on the request of a consumer, licensed dealer or licensed manufacturer.

C. On a request for an interlocutory cease and desist order made pursuant to R.S. 32:786(D)(1), the hearing officer shall issue the order based on the evidence and information submitted by the party, and should the evidence fail to provide the grounds as required in R.S. 32:786(D)(1)(a) through (d), the interlocutory cease and desist order shall be denied and converted to a rule to show cause why a cease and desist order should not be issued.

D. Should the interlocutory cease and desist order be signed and issued, the hearing officer may require that the requesting party issue a bond in an amount commensurate with the activity sought to be enjoined.

E. The interlocutory cease and desist order shall notify the party against whom the order is issued that the order will remain in effect until the next available commission meeting date.

F. An interlocutory cease and desist order shall be noticed for hearing in which the commission shall consider whether to vacate the order or incorporate the order into a final commission order. Said notice shall be served on all parties at least five days prior to the hearing.

G. In accordance with R.S. 32:786(D)(2), the interlocutory cease and desist order shall notify the party against whom the order is issued of its right to appeal the order to the commission and that said appeal shall be heard at the next available commission meeting date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:786.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1637 (August 2007).

§4711. Hearings on Area of Responsibility Disputes

A. Before a dealer can file a notice of intent under R.S. 32:815 or 817 to establish itself as a new dealer, it must provide to the commission written approval from the manufacturer and that the manufacturer has notified its existing dealer that it intends to establish a new dealer.

B. When the commission receives a timely objection in accordance with either R.S. 32:815 or 817 the commission shall notice the dispute for hearing within 30 days following receipt of the objection; however, the hearing shall not be set any sooner than 10 days prior to the hearing date.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:1638 (August 2007).

§4713. Hearings on a Repurchase Demands

A. Prior to noticing a repurchase demand for hearing, pursuant to R.S. 32:816, 818, 821 or 822, the hearing officer will determine the following:

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:1638 (August 2007).

Chapter 48. Designation of Area of Responsibility for Marine Products

§4801. Procedure of Designation of Area of Responsibility

A. Beginning August 16, 2004, the commission shall notify by certified mail each marine product manufacturer/distributor, who has prior to that date failed to designate an area of responsibility for each of its existing dealers, that they must designate an area of responsibility for each dealer within 30 days following receipt of the notifications. Failure to respond to the commission within 30 days shall constitute an absence of designation thereby mandating the areas of responsibility provided for in R.S. 32:781(2)(b).

B. ...

C. Thereafter, any marine product manufacturer /distributor which was not licensed with the commission prior to August 16, 2004, shall be notified by the commission by certified mail of their responsibility to designate an area of responsibility for their dealers. Failure to designate an area of responsibility for each dealer within 30 days following receipt of the notification shall constitute an absence of designation thereby mandating the area of responsibility provided for in R.S. 32:817(C).

D. Any changes in the area of responsibility once designated must meet criteria as set forth in R.S. 32:817(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:2481 (November 2004), amended LR 33:1638 (August 2007).

§4803. Uniform Procedures to Designate the Territory Assigned to a Marine Dealer

A. On any occasion in which the marine product manufacturer/distributor has designated, an area of responsibility smaller in size to that provided for in R.S. 32:781(2)(b) the marine product manufacturer and/or distributor must furnish with the designation the uniform procedure to establish the community or territory that is assigned to a marine dealer. If the manufacturer/distributor fails to furnish a uniform procedure with its designation, the commission shall reject the designation and shall so notify the manufacturer/distributor of the rejection by certified mail. With the notice of rejection, the commission shall provide the manufacturer/distributor the opportunity to appeal the rejection to the commission in a hearing at the commission's monthly meeting.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2482 (November 2004), amended LR 33:1638 (August 2007).

John M. Torrance
Executive Director

0708#032

RULE

Department of Health and Hospitals Board of Medical Examiners

Collaborative Drug Therapy Management
(LAC 46:XLV.Chapter 74)

In accordance with the Louisiana Medical Practice Act, R.S. 37:1270(A)(1), 1270(B), the Louisiana Pharmacy Practice Act, as amended during the 2006 Session of the Louisiana Legislature by Acts 2006, Number 627, R.S. 37:1164(37), and in accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Board of Medical Examiners ("board") has adopted LAC Title 46:XLV, Subpart 3, by adding Chapter 74, §§7401-7443, to govern the practice of physicians who engage in collaborative drug therapy management with pharmacists in this state.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Profession
Subpart 3. Practice

Chapter 74. Collaborative Drug Therapy
Management

Subchapter A. General Provisions

§7401. Scope of Subchapter

A. The rules of this Chapter govern the registration and practice of physicians engaged in collaborative drug therapy management with pharmacists in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1639 (August 2007).

§7403. Definitions

A. As used in this Chapter, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified.

Board—the Louisiana State Board of Medical Examiners, as constituted in the Medical Practice Act.

Collaborative Drug Therapy Advisory Committee or Advisory Committee—the Louisiana State Board of Medical Examiners' Collaborative Drug Therapy Advisory Committee, as constituted under §7417 of this Chapter.

Collaborative Drug Therapy Management Agreement or Agreement—a written document in which a pharmacist and a physician identify the terms and conditions under which they voluntarily agree to participate in collaborative drug therapy management.

Collaborative Drug Therapy Management or Drug Therapy Management—that practice in which a pharmacist, to the extent authorized by a collaborative drug therapy management agreement, voluntarily agrees with a physician registered with the board under this Chapter, to manage the disease specific drug therapy of one or more patients of such physician, within a predetermined range of medication selected by the physician and set forth in a written protocol. Drug therapy management shall be limited to:

- a. monitoring and modifying a disease specific drug therapy;
- b. collecting and reviewing patient history;
- c. obtaining and reviewing vital signs, including pulse, temperature, blood pressure and respiration;
- d. ordering, evaluating, and applying the results of laboratory tests directly related to the disease specific drug therapy being managed under written protocol, provided such tests do not require the pharmacist to interpret such testing or formulate a diagnosis;
- e. administration of vaccines to a patient 16 years of age or older by a pharmacist authorized to administer vaccines by the Louisiana Board of Pharmacy;
- f. providing up to a single seven-day supply of a single drug, in accordance with §7433 of this Chapter, after all refills authorized on the original prescription issued to the patient by the patient's physician have been dispensed; and
- g. providing disease or condition specific patient education and counseling.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-.15 or R.S. 40:964, or any

substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Disease Specific Drug Therapy—a specific drug(s) prescribed by a physician for a specific patient of such physician that is generally accepted within the standard of care for treatment of one of the following diseases or conditions:

- a. treatment and prevention of arterial and venous clot propagation and disease, i.e., anti-coagulant therapy;
- b. treatment and prevention of diabetes;
- c. adjustment of medication administered by inhalant for treatment of asthma;
- d. treatment and prevention of dyslipidemia;
- e. smoking cessation therapy;
- f. administration of disease specific vaccines to patients 16 years of age and older; and
- g. such other drugs, diseases or conditions, as may be subsequently recommended by the advisory committee and approved by the board.

Drug—a legend drug.

Drugs of Concern—a drug that is not a controlled substance but which is nevertheless defined and identified, in accordance with the procedures established by the Louisiana Prescription Monitoring Program Act, R.S. 40:1001-1014, as a drug with the potential for abuse.

Legend Drug—for purposes of this Chapter, any drug bearing on the label of the manufacturer or distributor as required by the Food and Drug Administration, the statement "Caution: Federal law prohibits dispensing without a prescription" or "Rx Only." For purposes of this Chapter, legend drugs do not include controlled substances.

Medical Practice Act or the Act—R.S. 37:1261-92 as may be amended from time to time.

Medication—except in these rules where its use may indicate otherwise, is synonymous with *drug*, as defined herein.

Pharmacist—for purposes of this Chapter an individual who has a current, unrestricted license to practice pharmacy in this state duly issued by the Louisiana Board of Pharmacy and has completed a certificate program in the area of practice covered by a collaborative drug therapy management agreement approved by the Accreditation Council for Pharmacy Education, or the academic degree of Doctor of Pharmacy that provides training in the area of practice covered by the agreement, or such other advanced training or program as may be recommended by the advisory committee and approved by the board.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current, unrestricted license duly issued by the board.

Prescribe—a request or order transmitted in writing, orally, electronically or by other means of telecommunication for a drug that is issued in good faith, in the usual course of professional practice and for a legitimate medical purpose, by a physician for the purpose of correcting a physical, mental, or bodily ailment of his/her patient.

Written Protocol—a written set of directives or instructions containing each of the components specified by §7429 of this Chapter for collaborative drug therapy management of disease specific drug therapy for a specific

patient. The written protocol shall be signed by the physician and represents the physician orders for the collaborative drug therapy management to be provided to the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1639 (August 2007).

Subchapter B. Prohibitions and Exceptions

§7405. Prohibitions and Exceptions

A. No physician shall engage in collaborative drug therapy management except in compliance with the rules of this Chapter.

B. This Chapter shall not apply to a physician's practice in a hospital licensed by the Louisiana Department of Health and Hospitals, provided the medication ordered or prescribed by the physician for in-patients of the hospital is managed in accordance with a written agreement approved by the members of the medical staff of the hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1640 (August 2007).

Subchapter C. Registration

§7407. Eligibility for Registration

A. No physician shall engage in collaborative drug therapy management in this state until registered with the board in accordance with the provisions of this Subchapter. To be eligible for registration a physician shall, as of the date of the application:

1. possess a current, unrestricted license to practice medicine issued by the board and not be the subject of a pending investigation or complaint by the board or by the medical licensing authority of any other state or jurisdiction;

2. be actively engaged in the clinical practice of medicine and the provision of patient care in this state in the particular field of medicine in which collaborative drug therapy management is to take place;

3. not be currently enrolled in a medical residency training program; and

4. not be employed by or serve as an independent contractor to a pharmacist, pharmacy, or pharmaceutical company, or be a party to any other or similar employment, contractual or financial relationship. The board may, in its discretion, grant an exception to this requirement on a case-by-case basis where it has been shown to its satisfaction that such relationship is structured so as to prohibit interference or intrusion into the physician's relationship with patients, the exercise of independent medical judgment and satisfaction of the obligations and responsibilities imposed by law or the board's rules on the physician.

B. A physician shall be deemed ineligible for registration of collaborative drug therapy management who:

1. does not possess the qualifications prescribed by Subsection A of this Section;

2. has voluntarily surrendered or had suspended, revoked or restricted, his/her controlled substances license, permit or registration, either state or federal;

3. has had a medical license suspended, revoked, placed on probation or restricted in any manner by the board or by the medical licensing authority of any other state or jurisdiction;

4. has had an application for medical licensure rejected or denied; or

5. has been, or is currently in the process of being denied, terminated, suspended, refused, limited, placed on probation or under other disciplinary action with respect to participation in any private, state, or federal health insurance program.

C. Upon the affirmative recommendation of the advisory committee the board may, in its discretion, waive the ineligibility restrictions of Paragraphs 7407.B.2-5 of this Section on a case-by-case basis where it has been shown to its satisfaction that the license, registration, permit, or participation in the health insurance program giving rise to ineligibility has been granted, reinstated or restored on an unrestricted basis, that following such action the individual has not been subject to further or additional disqualifying action and has demonstrated exemplary conduct or accomplishments meriting waiver consideration.

D. The board may deny registration to an otherwise eligible physician for any of the causes enumerated by R.S. 37:1285(A), or any other violation of the provisions of the Medical Practice Act or of the board's rules.

E. The burden of satisfying the board as to the eligibility of a physician for registration to engage in collaborative drug therapy management shall be upon the physician. A physician shall not be deemed to possess such qualifications unless and until the physician demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1640 (August 2007).

§7409. Registration Procedure

A. Application for registration to engage in collaborative drug therapy management shall be made upon forms supplied by the board.

B. Application forms and instructions may be obtained from the board's web site www.lsbme.louisiana.gov or upon contacting the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1640 (August 2007).

§7411. Original Application; Issuance of Registration

A. An application for registration to engage in collaborative drug therapy management shall include:

1. the physician's full name, license number, home address, e-mail address, emergency contact information, and the municipal post office address of each office or other location at which the applicant practices medicine in this state;

2. a description of the physician's professional background, specialty and the nature and scope of medical practice;

3. proof documented in a form satisfactory to the board that the physician possesses the qualifications set forth in this Subchapter;

4. a fully executed copy of a collaborative drug therapy management agreement that conforms to the requirements of §7427 of these rules;

5. confirmation that the physician shall only engage in collaborative drug therapy management in the particular field of medicine in which collaborative drug therapy management is to take place and in accordance with the rules and regulations adopted by the board; and

6. such other information and documentation as the board may require to evidence qualification for registration.

B. The board may reject or refuse to consider any application for registration that is not complete in every detail required by the board or a collaborative drug therapy management agreement that fails to comply with the minimum requirements specified by §7427 of this Chapter. The board may in its discretion require a more detailed or complete response to any request for information set forth in the application or the collaborative drug therapy management agreement as a condition to consideration.

C. A physician seeking registration to engage in collaborative drug therapy management shall be required to appear before the board or its designee if the board has questions concerning the nature or scope of the physician's application, finds discrepancies in the application, or for other good cause as determined by the board.

D. Registration of authority to engage in collaborative drug therapy management shall not be effective until the physician receives notification of approval from the board. If all the qualifications, requirements and procedures of §§7407, 7409, and 7411 of this Subchapter are met to the satisfaction of the board, the board shall approve and register a physician to engage in collaborative drug therapy management.

E. Although a physician shall notify the board each time he intends to engage in collaborative drug therapy management with a pharmacist, other than the pharmacist identified in the physician's original application, registration with the board is only required once. The board shall maintain a list of physicians who are registered to engage in collaborative drug therapy management.

F. Each registered physician is responsible for updating the board within 15 days in the event any of the information required and submitted in accordance with §§7407, 7409 and 7411 of this Subchapter changes after the physician has become registered to engage in collaborative drug therapy management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6), and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1640 (August 2007).

§7413. Notice of Intent to Collaborate

A. Notification of intent to engage in collaborative drug therapy management with a pharmacist, other than the pharmacist identified in the physician's original application, shall be filed with the board by a registered physician for each pharmacist with whom the physician intends to collaborate. Such notification shall be deemed given upon the physician's filing with the board, prior to initiating collaborative drug therapy management, a notice of intent to engage in collaborative drug therapy management on a form supplied by the board, along with a fully executed copy of a collaborative drug therapy management agreement with such pharmacist that conforms to the requirements of §7427 of these rules. Prior to engaging in collaborative drug therapy management with such pharmacist the physician shall have

received confirmation and approval of notification of intent from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1641 (August 2007).

§7415. Expiration of Registration; Renewal

A. A physician's registration to engage in collaborative drug therapy management with a pharmacist shall terminate and become void, null and of no effect upon the earlier of:

1. death of either the physician or a pharmacist;
2. loss of license of either the physician or pharmacist;
3. disciplinary action limiting the ability of either the physician or a pharmacist to enter into collaborative drug therapy management;
4. notification to the board that either the physician or pharmacist has withdrawn from collaborative drug therapy management;

5. a finding by the board of any of the causes that would render a physician ineligible for registration under this Subchapter; or

6. expiration of a physician's medical license or registration to engage in collaborative drug therapy management for failure to timely renew such license or registration.

B. Registration of authority to engage in collaborative drug therapy management shall expire annually on the same day as a physician's medical license unless renewed by a physician by submitting an application to the board upon forms supplied by the board, together with verification of the accuracy of registration and collaborative drug therapy management agreement information on file with the board. An application for registration renewal shall be made part of and/or accompany a physician's renewal application for medical licensure.

C. The timely submission of an application for renewal of a registration shall operate to continue the expiring registration in effect pending renewal of registration or other final action by the board on such application for renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1641 (August 2007).

Subchapter D. Collaborative Drug Therapy Advisory Committee

§7417. Constitution of Committee

A. To assist the board on matters relative to collaborative drug therapy management, a Collaborative Drug Therapy Management Advisory Committee is hereby constituted, to be composed and appointed, to have such functions, and to discharge such duties and responsibilities as hereinafter provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1641 (August 2007).

§7419. Composition; Appointment

A. The advisory committee shall be composed of seven members, consisting of four physicians and three pharmacists. These members shall include: one physician designated by the Louisiana State University Health

Sciences Center School of Medicine in New Orleans; one physician designated by the Louisiana State University Health Sciences Center School of Medicine in Shreveport, one physician designated by the Tulane University Health Sciences Center School of Medicine; one physician designated by the Louisiana State Medical Society; one pharmacist who holds the academic degree of Doctor of Pharmacy designated by the Xavier University of Louisiana College of Pharmacy; one pharmacist who holds the academic degree of Doctor of Pharmacy designated by the University of Louisiana at Monroe School of Pharmacy; and one pharmacist designated by the Louisiana Board of Pharmacy. The president of the Louisiana State Board of Medical Examiners or his/her designee may sit on the committee in an ex officio capacity.

B. To be eligible for appointment to the advisory committee each individual shall have maintained residency and practiced their profession in the state of Louisiana for not less than one year, hold the qualifications prescribed by this Chapter for those of their respective professions who may wish to engage in collaborative drug therapy management, and possess education, particular experience, advanced training or other qualifications that the board may deem to be of value to the advisory committee in the discharge of its duties and responsibilities.

C. Each member of the advisory committee shall be appointed by the board from among a list of one or more qualified nominees for each position submitted to the board. Accompanying each nominee shall be a personal resume or curriculum vitae for the individual. In the event a designating entity does not submit nominees within 60 days of the board's request the position or vacancy may be filled by a physician or pharmacist designated by the board. Each member of the advisory committee shall serve for a term of three years or until a successor is appointed and shall be eligible for reappointment. With the exception of the member designated by the Louisiana Board of Pharmacy, who shall serve at the pleasure of that board, all members of the advisory committee shall serve and be subject to removal at any time at the pleasure of the board. Members appointed to fill a vacancy occurring other than by expiration of the designated term shall serve for the unexpired term. Appointments to the advisory committee shall be effective when made with respect to appointments for unexpired terms and otherwise shall be effective as of the first day of the year following the date of appointment.

D. The advisory committee shall meet not less than twice each calendar year, or more frequently as may be deemed necessary or appropriate by a quorum of the advisory committee or by the board. The presence of four members shall constitute a quorum. The advisory committee shall elect from among its members a chairperson, a vice-chairperson and a secretary. The chair or in the absence or unavailability of the chair the vice-chair, shall call, designate the date, time and place of, and preside at meetings of the advisory committee. The secretary shall record or cause to be recorded, accurate and complete written minutes of all meetings of the advisory committee and shall cause copies of the same to be provided to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1641 (August 2007).

§7421. Duties and Responsibilities

A. The advisory committee is authorized by the board to assist by:

1. reviewing applications for physician registration and notifications of intent to engage in collaborative drug therapy management and collaborative drug therapy management agreements, to insure compliance with the requirements of this Chapter;

2. identifying disease specific conditions for which there are generally accepted standards of care that are amenable to collaborative drug therapy management. The committee shall periodically, but not less frequently than annually, provide the board with recommendations relative to additional diseases, conditions, vaccines, and categories of drugs that may be appropriate for collaborative drug therapy management;

3. providing advice and recommendations to the board respecting the modification, amendment, and supplementation of its rules concerning physicians who engage in collaborative drug therapy management;

4. serving as a liaison between and among the board, physicians and pharmacists who engage in collaborative drug therapy management; and

5. identifying and recommending to the board acceptable certificate programs and other advanced training or programs in the areas of practice covered by collaborative drug therapy management agreements.

B. In discharging the functions authorized under this Section the advisory committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. All information obtained by the advisory committee members pursuant to this Section shall be considered confidential. Advisory committee members are prohibited from communication, disclosing, or in any way releasing to anyone any information or documents obtained when acting as agents of the board without first obtaining the written authorization of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1642 (August 2007).

Subchapter E. Standards of Practice

§7423. Authority, Responsibility and Limitations of Collaborative Drug Therapy Management

A. A physician registered with the board under this Chapter may engage in collaborative drug therapy management with a pharmacist:

1. to the extent authorized by a collaborative drug therapy management agreement that has been filed with and approved by the board; and

2. in accordance with a patient specific, drug specific, disease specific written protocol, satisfying the requirements of §7429 of this Chapter.

B. A physician engaged in collaborative drug therapy management shall:

1. retain professional responsibility to his/her patients for the management of their drug therapy;

2. establish and maintain a physician-patient relationship with each patient subject to the collaborative drug therapy management agreement;

3. be geographically located so that the physician, or a back-up physician as provided in §7427.D of this Chapter, is able to be physically present daily to provide medical care to a patient subject to collaborative drug therapy management;

4. receive on a schedule defined in the written protocol, a periodic status report on the patient including, but not limited to, any problem, complication or other issues relating to patient non-compliance with drug therapy management; and

5. be available through direct telecommunication for consultation, assistance, and direction.

C. A physician's registration to engage in collaborative drug therapy management with a pharmacist is personal to the physician. A registered physician shall not allow another physician or any other individual to exercise the authority conferred by such registration. A registered physician shall not engage in collaborative drug therapy management with a non-pharmacist or with any pharmacist who is not a party to the physician's collaborative drug therapy management agreement on file with the board.

D. Collaborative drug therapy management shall only be utilized for those conditions or diseases identified in and in the manner specified by §7403 of this Chapter. Additional conditions or diseases for which there are generally accepted standards of care for disease specific drug therapy may be identified by the advisory committee and approved by the board in accordance with 7403.Definitions.*Disease Specific Drug Therapy* and §7421 of this Chapter.

E. A physician shall only engage in collaborative drug therapy management of anti-coagulant therapy with a pharmacist who holds the academic degree of Doctor of Pharmacy, which degree provided training in the area of practice covered by the agreement. The board may, in its discretion, grant an exception to this limitation on a case-by-case basis and permit a physician to engage in anti-coagulant drug therapy management with a pharmacist who does not possess the academic degree required by this Subsection upon the affirmative recommendation and advice of the advisory committee that the pharmacist possesses the equivalent or other acceptable advanced training in the area of practice covered by the agreement.

F. The scope of the collaborative drug therapy management shall not include:

1. any patient of the physician for whom such physician has not prepared a patient specific, drug specific, disease specific written protocol;

2. drug therapy management of more than one specific disease or condition. Administration of a vaccine or smoking cessation therapy are excepted from this provision;

3. drug therapy management of any patient by more than one registered physician and one pharmacist;

4. any patient under 18 years of age. Administration of a vaccine or smoking cessation therapy are excepted from this provision;

5. pregnant or nursing mothers;

6. initiation or discontinuance of drug therapy by a pharmacist, except as specified in the written protocol;

7. the management of controlled substances or drugs of concern; or

8. substitution of a drug prescribed by a physician without the explicit written consent of such physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1642 (August 2007).

§7425. Informed Consent

A. A physician shall not engage in collaborative drug therapy management of a patient without the patient's written informed consent.

B. In addition to the requirements provided by law for obtaining a patient's informed consent, each patient who is subject to collaborative drug therapy management shall be:

1. informed of the collaborative nature of drug therapy management for the patient's specific medical disease or condition and provided instructions and contact information for follow-up visits with the physician and pharmacist;

2. informed that he or she may decline to participate in a collaborative drug therapy management practice and may withdraw at any time without terminating the physician-patient relationship; and

3. provided written disclosure of any contractual or financial arrangement with any other party that may impact one of the party's decisions to participate in the agreement.

C. All services provided pursuant to a collaborative drug therapy management agreement shall be consistent with the agreement and shall be performed in a setting that insures patient privacy and confidentiality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1643 (August 2007).

§7427. Collaborative Drug Therapy Management Agreement

A. A collaborative drug therapy management agreement shall, at a minimum, include:

1. the name, professional license number, address(es), telephone/cell number, e-mail address and emergency contact information for the physician and pharmacist and the date of signing and termination of the agreement;

2. a description of the manner and circumstances under which the physician and pharmacist will engage in collaborative drug therapy management;

3. the condition or disease to be managed;

4. the disease specific drug(s) to be utilized for such condition or disease;

5. the drug therapy management activities, as defined in §7403 of this Chapter, the physician authorizes the pharmacist to perform;

6. the procedure to be followed by the parties for drug therapy management and a plan of accountability that defines the respective responsibilities of the physician and pharmacist;

7. a plan for reporting and documenting drug therapy management activities in the medical and pharmacy records and schedule by which such are to take place. A physician shall insure that the pharmacist submits a report at least every 30 days, or more frequently if warranted by clinical conditions, to the physician regarding the status of a patient's collaborative drug therapy management, which report shall

be noted in and made part of the physician's record on the patient;

8. a plan for record keeping, record sharing and record storage. The agreement shall acknowledge that all collaborative drug therapy management records shall be treated as and governed by the laws applicable to physician medical records;

9. acknowledgement that each patient subject to the agreement shall be notified that a collaborative drug therapy management agreement exists, describes the procedures for obtaining informed consent of such patient and the plan to address patient needs when both the physician and pharmacist are absent from the practice setting; and

10. the procedure and schedule for reviewing and assessing the quality of care provided to patients subject to collaborative drug therapy management under written protocol.

B. In the event the physician authorizes the pharmacist to order, evaluate, and apply the results of a laboratory test(s) directly related to the disease specific drug therapy being managed under written protocol, the agreement shall identify the specific test(s) and describe the plan for securing such testing.

C. The agreement shall affirm that:

1. collaborative drug therapy management shall be in conformity with generally accepted standards of care for treatment of a patient's specific disease or condition;

2. all services provided pursuant to a collaborative drug therapy management shall be consistent with the agreement and performed in a setting that insures patient privacy and confidentiality; and

3. a copy of the agreement shall be maintained on site by the respective parties.

D. The agreement may include the identity of a single back-up physician possessing the qualifications for collaborative drug therapy management prescribed by this Chapter, who will serve in the absence of the registered physician to the agreement. The identifying information specified by Paragraph 7427.A.1 of this Section shall be provided for such physician, along with an acknowledgment of responsibility to adhere to the same obligations and commitments imposed upon the registered physician to the agreement, as evidenced by a dated signature.

E. An agreement is valid for a period not to exceed one year. A physician shall insure that a collaborative drug therapy management agreement is annually reviewed, updated as appropriate, signed by the physician and pharmacist and submitted to the board for review and approval of any substantive changes.

F. Each registered physician is responsible for updating the board within 15 days in the event any of the information required and submitted in accordance with this Section changes after the board has approved the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1643 (August 2007).

§7429. Written Protocols

A. A separate protocol shall be written for each patient to be managed by collaborative drug therapy management. A copy of each written protocol shall be:

1. provided to the collaborating pharmacist;
2. made part of the patient's medical record; and
3. appended by the physician to the collaborative drug therapy management agreement with the pharmacist and maintained in a separate file at the practice site listed on the physician's registration on file with the board.

B. A physician shall develop a patient specific written protocol for a particular patient or utilize a standard written protocol, incorporating what patient specific deviations, if any, the physician may deem necessary or appropriate for such patient. In either event, a written protocol for disease specific drug therapy shall adhere to generally accepted standards of care and shall identify, at a minimum:

1. the physician, the pharmacist and telephone number and other contact information for each;

2. the patient's name, address, gender, date of birth, and telephone number;

3. the disease or condition to be managed;

4. the disease specific drug(s) to be utilized;

5. the type and extent of drug therapy management the physician authorizes the pharmacist to perform;

6. the specific responsibilities of the physician and pharmacist;

7. the procedures, criteria or plan the pharmacist is required to follow in connection with drug therapy management;

8. the specific laboratory test(s), if any, that are directly related to drug therapy management that the physician authorizes the pharmacist to order and evaluate;

9. the reporting and documentation requirements of the physician and pharmacist respecting the patient and schedule by which such are to take place;

10. the conditions and events upon which the physician and pharmacist are required to notify one another; and

11. procedures to accommodate immediate consultation by telephone or direct telecommunication with or between the physician, pharmacist and/or the patient.

C. Every written protocol utilized for collaborative drug therapy management of a patient shall be reviewed annually by a registered physician, or more frequently as such physician deems necessary, to address patient needs and to insure compliance with the requirements of this Chapter. The physician's signature and date of review shall be noted on the written protocol and maintained by the physician in accordance with Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1644 (August 2007).

§7431. Administration of Vaccines

A. A physician who engages in collaborative drug therapy management with a pharmacist that includes administration of a patient specific order for administration of a disease specific vaccine:

1. shall:

a. include such authority in the collaborative drug therapy management agreement with such pharmacist that has been filed with the board; and

b. annex documentation to the collaborative drug therapy management agreement evidencing such pharmacist is currently authorized by the Louisiana Board of Pharmacy

to administer medication and confirming that such pharmacist shall in every instance adhere to the requirements specified by Section 521 of the Louisiana Pharmacy Board's rules relative to administration of vaccines.

2. In addition to the requirements of Section 7429 and Subsection A of this Section, a physician shall include within the written protocol for any patient of such physician to receive a vaccine:

a. the identity of the drug, dose and route of administration;

b. the date of the original order and the date of any authorized subsequent dose or administration;

c. a statement that the patient or patient's legal guardian shall be provided the manufacturer's vaccine information statement with each dose;

d. confirm that written policies and procedures for disposal of used or contaminated supplies shall be utilized;

e. require the pharmacist to immediately report any adverse event to the collaborating physician and such governmental entities as may be directed or required by the Louisiana Department of Health and Hospitals; and

f. confirm that the physician shall be promptly available for consultation regarding contraindications and adverse reactions to such physician's patient.

B. This Chapter shall not prevent or restrict the Louisiana Department of Health and Hospitals, Office of Public Health, or any other governmental entity of this state, from administering vaccines under the authority of other laws of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1644 (August 2007).

§7433. Additional Refills

A. Whether or not and the extent to which a physician may authorize a pharmacist to dispense up to a single seven-day supply of a single drug for a single patient utilized for disease specific drug therapy after all refills authorized for such physician's patient have been dispensed, shall be specifically included in the collaborative drug therapy management agreement with such pharmacist, as well as the written protocol applicable to a specific patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1645 (August 2007).

§7435. Reporting Obligations and Responsibilities

A. A physician engaged in collaborative drug therapy management shall:

1. within 15 days of the occurrence or discovery notify the board in writing of:

a. the death of a patient that was, in the physician's opinion, directly related to drug therapy management;

b. complications or errors that are, in the physician's opinion, directly related to drug therapy management;

c. a physician's termination of a collaborative drug therapy management agreement with a pharmacist and applicable reasons;

d. a pharmacist's termination of a collaborative drug therapy management agreement with a physician and applicable reasons;

e. a patient's election to withdraw from participation in collaborative drug therapy management and applicable reasons;

f. a physician's or a pharmacist's failure and/or refusal to abide by the terms, conditions or restrictions of a drug therapy management agreement or written protocol and applicable reasons;

g. the physician's retirement or withdrawal from active clinical practice in this state or relocation to another state to engage in practice; or

h. the revocation, suspension or other restriction imposed on a pharmacist's license that would prohibit the pharmacist from entering into a collaborative drug therapy management agreement;

2. comply with reasonable requests by the board for personal appearances and/or information relative to the functions, activities and performance of a physician or pharmacist engaged in collaborative drug therapy management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1645 (August 2007).

§7437. Records

A. Included with a physician's medical record on a patient subject to collaborative drug therapy management shall be a copy of:

1. the prescription or order implementing drug therapy management;

2. the written protocol applicable to the patient evidencing documentation of annual review;

3. documentation of all activities performed by the physician and pharmacist;

4. consultations and reports by and between the physician and pharmacist; and

5. documentation of the patient's informed consent to collaborative drug therapy management.

B. A physician registered to engage in drug therapy management shall maintain and produce, upon inspection conducted by or at the request of a representative of the board, a copy of any or all collaborative drug therapy management agreement(s), amendments thereto, applicable written protocols and such other records or documentation as may be requested by the board to assess a physician's compliance with the requirements of this Chapter, the Act or other applicable rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1645 (August 2007).

Subchapter F. Sanctions

§7439. Action against Medical License

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), providing cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license to practice medicine in Louisiana held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6), 1285, and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1645 (August 2007).

§7441. Action against Registration

A. For noncompliance with any of the provisions of this Chapter the board may, in addition to or in lieu of administrative proceedings against a physician's license, suspend, revoke, or cancel a physician's registration to engage in collaborative drug therapy management or impose such terms, conditions or restrictions thereon as the board may deem necessary or appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6), 1285, and 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1646 (August 2007).

§7443. Unauthorized Practice

A. Nothing in this Chapter shall be construed as authorizing a pharmacist to issue prescriptions, exercise independent medical judgment, render diagnoses, provide treatment, assume independent responsibility for patient care, or otherwise engage in the practice of medicine as defined in the Medical Practice Act. Any person who engages in such activities, in the absence of medical licensure issued by the board, shall be engaged in the unauthorized practice of medicine and subject to the penalties prescribed by the Medical Practice Act.

B. Any physician who associates with or assists an unlicensed person engage in the practice of medicine shall be deemed to be in violation of R.S. 37:1285(A)(18), providing cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license to practice medicine in Louisiana held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6), 1271, 1285, 1286, 1290, and R.S. 37:1164(37).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:1646 (August 2007).

Robert L. Marier, M.D.
Executive Director

0708#070

RULE

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

**Nursing Facilities—Reimbursement Methodology
Private Room Conversions (LAC 50:VII.1310)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts §1310 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 Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement Methodology

§1310. Additional Payments and Square Footage

Adjustments for Private Room Conversion

A. Effective for dates of service on or after September 1, 2007, Medicaid participating nursing facilities that convert a semi-private room to a Medicaid-occupied private room are eligible to receive an additional \$5 per diem payment. Facilities that participate will have their fair rental value per diem revised based on the change in licensed beds.

B. Qualifying Facilities

1. In order for a nursing facility's beds to qualify for an additional \$5 per diem payment, a revised fair rental value (FRV), a revised property tax pass-through, and revised property insurance pass-through, all of the following conditions must be met.

a. The nursing facility must convert one or more semi-private rooms to private rooms on or after September 1, 2007.

b. The converted private room(s) must be occupied by a Medicaid resident(s) to receive the \$5 per diem payment.

c. The nursing facility must surrender their bed licenses equal to the number of converted private rooms.

d. The nursing facility must submit the following information to the department within 30 days of the private room conversion:

i. the number of rooms converted from semi-private to private;

ii. the revised bed license;

iii. a resident listing by payer type for the converted private rooms; and

iv. the date of the conversions.

C. The additional \$5 per diem payment determination will be as follows.

1. An additional \$5 will be added to the nursing facility's case-mix rate for each Medicaid resident day in a converted private room.

2. The payment will begin the first day of the following calendar quarter, after the facility meets all of the qualifying criteria in §1310.B.1.

3. A change in ownership, major renovation, or replacement facility will not impact the \$5 additional per diem payment provided that all other provisions of this Section have been met.

D. The revised fair rental value per diem will be calculated as follows.

1. After a qualifying conversion of semi-private rooms to private rooms, the nursing facility's square footage will be divided by the remaining licensed nursing facility beds to calculate a revised square footage per bed.

2. After a qualifying private room conversion, the allowable square footage per bed used in §1305.D.3.b. will be determined as follows.

a. No Change in Total Square Footage. The total allowable square footage after a qualifying private room conversion will be equal to the total allowable square

footage immediately prior to the conversion, provided no other facility renovations or alterations changing total square footage occur concurrently or subsequently to the private room conversion.

b. Square Footage Changes to Existing Buildings. If a change in total nursing square footage occurs in a building existing on the effective date of this rule and that change is concurrent or subsequent to a private room conversion, the allowable square footage will be determined in accordance with §1305.D.3.b.i as if the private room conversion did not occur.

c. Square Footage Changes Due to New Buildings. Replacement buildings constructed or first occupied after the effective date of this rule will have their allowable square footage calculated in accordance with §1305.D.3.b.i.

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 70 percent of the revised annual bed days available after the change in licensed beds.

4. A revised fair rental value per diem will be calculated under §1305.D.3.b. using the allowable square footage according to §1310.D.2, remaining licensed beds, and the revised minimum occupancy calculation.

5. The revised fair rental value per diem will be effective the first of the following calendar quarter, after the facility meets all qualifying criteria in paragraph §1310.B.1.

E. Reporting

1. To remain eligible for the conversion payments and the allowable square footage calculations, facilities must report Medicaid-occupied private rooms with every annual cost report.

2. The department may also require an alternate billing procedure for providers to receive the additional \$5 private room rate.

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).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#090

RULE

**Department of Health and Hospitals
Office of the Secretary**

Office for Citizens with Developmental Disabilities

**Home and Community-Based Services Waivers
New Opportunities Waiver**

**Service Cap Increase and Clarification of Services
(LAC 50:XXI.13701 and Chapters 139-143)**

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental

Disabilities amends LAC 50:XXI.13701 and Chapters 139-143 under 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 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. ...

B. All NOW services are accessed through the case management agency of the recipient's choice. All services must be prior authorized and delivered in accordance with the approved comprehensive plan of care (CPOC). The CPOC 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 will provide said documentation at the request of the department.

D. - F. ...

G. Providers shall follow the regulations and requirements as specified in the NOW provider manual.

H. Home and community-based services shall not be reimbursed while the recipient is a patient in an inpatient 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, 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).

Chapter 139. Covered Services

§13901. Individualized and Family Support Services

A. Individualized and Family Support (IFS) services are direct support and assistance services provided in the home or the community that allow the recipient 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 CPOC.

1. ...

a. Additional hours of IFS day services beyond the 16 hours can be approved based on documented need, which can include medical or behavioral and specified in the approved CPOC.

2. - 2.e. ...

B. IFS services may be shared by up to three waiver recipients who may or may not live together and who have a common direct service provider agency. Waiver recipients may share IFS services staff when agreed to by the recipients and health and welfare can be assured for each individual. The decision to share staff must be reflected on the CPOC 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 recipient 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. - D.1. ...

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, unless the worker's residence is a certified foster care home.

D.3. - E.2. ...

3. An IFS-D or 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 CPOC. An IFS-D or 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 CPOC.

F. ...

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 approved by the department.

2. ...

3. The provision of IFS services in licensed congregated settings shall be excluded from coverage.

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 30:1202 (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).

§13903. Center-Based Respite Care

A. Center-Based Respite (CBR) Care is temporary, short-term care provided to a recipient 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 recipient'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 their reimbursement. Individual and family support services (both day and night) will not be reimbursed while the recipient is in a center-based respite facility.

B. - 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 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).

§13905. Community Integration Development

A. Community Integration Development (CID) facilitates the development of opportunities to assist recipients in becoming involved in their 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 recipient's choices and values. Objectives outlined in the Comprehensive 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 recipient 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 recipients who have a common direct service provider agency. The shared staff shall be reflected on the CPOC and based on an individual-by-individual determination. Rates shall be adjusted accordingly.

B. - 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 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).

§13907. Residential Habilitation-Supported Independent Living

A. - B. ...

C. Exclusions

1. Legally responsible relatives may not be SIL providers. Payment for SIL does not include payments made directly or indirectly to members of the individual's immediate family.

2.a. - c. ...

d. routine care and supervision which could be expected to be provided by a family member; or

e. activities or supervision for which a payment is made by a source other than Medicaid, e.g., Office for Citizens with Developmental Disabilities, etc.

f. Repealed.

D. ...

E. Provider Qualifications. The provider must possess a current, valid license for the Supervised Independent Living module.

F. - F.2. ...

3. Residential habilitation services shall be coordinated with any services listed in the approved CPOC, 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).

§13913. Supported Employment

A. - D.1. ...

2. Follow along services are designed for individuals 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.

D.3. - F.3. ...

G. Licensing Requirements. The provider must possess a valid certificate of compliance as a Community Rehabilitation Provider (CRP) from Louisiana Rehabilitation Services.

1. Existing providers of supported employment services shall be allowed 12 months after the effective date of the final Rule to comply with the licensing and accreditation requirements.

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).

§13917. Employment-Related Training

A. Employment-related training consists of paid employment for recipients 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 their disabilities. Services are aimed at providing recipients 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 recipient's capacity to perform productive work and to function adaptively in the work environment. The recipient 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. - D. ...

E. Licensing Requirements. The provider must possess a current, valid license as an adult day care center and a valid certificate of compliance as a Community Rehabilitation Provider (CRP) from Louisiana Rehabilitation Services.

1. Existing providers of employment-related training services shall be allowed 12 months after the effective date of the final Rule to comply with the licensing requirements.

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).

§13919. Environmental Accessibility Adaptations

A. - C. ...

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 CPOC 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. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the recipient.

2. Upon completion of the work and prior to payment, the provider shall give the recipient a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

3. - 5. ...

6. Excluded are those vehicle adaptations which are of general utility or for maintenance of the vehicle or repairs to adaptations. Car seats are not considered a vehicle adaptation.

D. Service Limits. There is a cap of \$7,000 per recipient 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 recipient 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, an individual may be able to exceed this cap with the approved CPOC and if they have the requested funds available in Specialized Medical Equipment and Supplies service cap. An individual may access up to the available maximum in the service cap for Specialized Equipment and Supplies.

E. Provider Qualifications. The provider must be an enrolled Medicaid provider and comply with applicable state and local laws governing licensure and/or certification.

1. All providers of environmental accessibility adaptations must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor, with the exception of providers of vehicle adaptations.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

3. Existing providers of environmental accessibility adaptations to vehicles shall be allowed 12 months after the effective date of the final Rule to comply with the licensing and accreditation requirements of §13919.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 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).

§13921. Specialized Medical Equipment and Supplies

A. - D. ...

E. Service Limitations. There is a cap of \$1,000 per individual for specialized equipment and supplies. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient 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, an individual may be able to exceed this cap with the approved CPOC and if they have the requested funds available in Environmental Accessibility Adaptations. An individual may access up to the available maximum in the service cap for Environmental Accessibility Adaptations.

F. Provider Qualifications. All agencies who are vendors of technological equipment and supplies must be enrolled in the Medicaid Program as a durable medical equipment provider and must meet all applicable vendor standards and requirements for manufacturing, design and installation of technological equipment and supplies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, 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).

§13923. Personal Emergency Response Systems

A. - B. ...

1. have a demonstrated need for quick emergency back-up;

2. are unable to use other communication systems as they are not adequate to summon emergency assistance; or

3. do not have 24 hour direct supervision.

4. - 5. Repealed.

C. - D. ...

E. Provider Qualifications. The provider must be an enrolled Medicaid provider of the Personal Emergency Response System. 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 recipient 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).

Editor's Note: §13925, Professional Consultation, has been repealed and new text has been inserted into §13925.

§13925. Professional Services

A. Professional services are services designed to increase the individual's independence, participation and productivity in the home, work and community. Recipients, 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 recipient present and be provided based on the approved CPOC and an individualized service plan. Service intensity, frequency and duration will be determined by individual need. Professional services may be utilized to:

1. perform assessments and/or re-assessments and recommendations;

2. provide consultative services and recommendations;

3. provide training or therapy to an individual and/or their natural and formal supports necessary to either develop critical skills that may be self-managed by the individual or maintained according to the individual's needs;

4. intervene in and stabilize a crisis situation, behavioral or medical, that could result in the loss of home and community-based services; or

5. provide necessary information to the individual, family, caregivers and/or team to assist in the implementation of plans according to the approved CPOC.

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 recipient and his or her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with mental retardation or 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 mental retardation and development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders, and social skills. Services must only address those personnel outcomes and goals listed in the approved CPOC.

3. Nutritional/Dietary services are medically necessary direct services provided by a licensed registered dietician or licensed nutritionist. Services must be ordered by a physician. Direct services may address health care and nutritional needs related to prevention and primary care activities, treatment and diet. Reimbursement is only available for the direct service performed by a dietitian or nutritionist, and not for the supervision of a dietician or nutritionist performing the hands-on direct service.

C. Service Limits. There shall be a \$2,250 cap per recipient per CPOC year for the combined range of professional services in the same day but not at the same time.

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 their area of expertise.

E. Non-Reimbursable Activities. The following activities are not reimbursable:

1. friendly visiting, attending meetings;

2. time spent on paperwork or travel;

3. time spent writing reports and progress notes;

4. time spent on the billing of services; and

5. other non-Medicaid reimbursable activities.

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).

§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 individual's approved CPOC. All Medicaid State Plan services must be utilized before accessing this service. Recipients, up to the age of 21, must access these services as outlined on their CPOC through the Home Health Program.

B. When there is more than one recipient in the home receiving skilled nursing services, services may be shared and payment must be coordinated with the service authorization system and each recipient's approved CPOC. Nursing consultations are offered on an individual basis only.

C. Provider Qualifications. The provider must possess a current valid license as a home health agency.

D. - D.6.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 30:1208 (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).

§13929. One Time Transitional Expenses

A. One time transitional expenses are those allowable expenses incurred by recipients who are being transitioned from an ICF-MR to their own home or apartment in the community of their choice. "Own home" shall mean the recipient's own place of residence and does not include any family members home or substitute family care homes.

B. Allowable transitional expenses include:

1. the purchase of essential furnishings such as:
 - a. bedroom and living room furniture;
 - b. table and chairs;
 - c. window blinds;
 - d. eating utensils; and
 - e. food preparation items;
2. moving expenses required to occupy and use a community domicile;
3. health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy; and
4. nonrefundable security deposits.

5. - 9. Repealed.

C. Service Limits. Set-up expenses are capped at \$3,000 over a recipient's lifetime.

D. Service Exclusion. Transitional expenses shall not constitute payment for housing, rent, or refundable security deposits.

E. Provider Qualifications. This service shall only be provided by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities (OCDD) with coordination of appropriate entities.

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

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).

§13931. One Time Transitional Expenses

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 30:1209 (June 2004), repealed by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007).

§13933. Transitional Professional Support Services

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 30:1209 (June 2004), repealed by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007).

§13935. Consumer Directed Service

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 30:1209 (June 2004), repealed by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007).

Chapter 141. Self-Direction Initiative

§14101. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the recipient to coordinate the delivery of designated NOW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

1. - 10. Repealed.

B. Recipient Responsibilities. Waiver recipients choosing the self-directed services option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the recipient is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the recipient or authorized representative include:

1. completion of mandatory trainings, including the rights and responsibilities of managing their own services and supports and individual budget;
2. participation in the self-direction service option without a lapse in or decline in quality of care or an increased risk to health and welfare, and;

2. participation in the self-direction service option without a lapse in or decline in quality of care or an increased risk to health and welfare, and;

a. adhere to the health and welfare safeguards identified by the team, including the application of a comprehensive monitoring strategy and risk assessment and management systems;

3. participation in the development and management of the approved Personal Purchasing Plan:

a. this annual budget is determined by the recommended service hours listed in the recipient's CPOC to meet his needs;

b. the recipient's individual budget includes a potential amount of dollars within which the recipient or his authorized representative exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of the Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the CPOC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. The waiver recipient may chose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a recipient and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the recipient is compromised by continued participation in the self-directed option;

b. the recipient is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the recipient or the authorized representative; or

d. over three consecutive payment cycles, the recipient or authorized representative:

i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff;

ii. fails to follow the Personal Purchasing Plan;

iii. fails to provide required documentation of expenditures and related items; or

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

3. Repealed.

D. - E.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 30:1209 (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).

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 recipient. 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 recipients who choose to share supports will be reimbursed at 75 percent of the full rate for each recipient;

b. services furnished to three recipients who choose to share supports will be reimbursed at 66 percent of the full rate for each recipient;

3. Day Habilitation;

4. Employment Related Training;

5. Individualized and Family Support-Day and Night:

a. services furnished to two recipients who choose to share supports will be reimbursed at 75 percent of the full rate for each recipient;

b. services furnished to three recipients who choose to share supports will be reimbursed at 66 percent of the full rate for each recipient;

6. Professional Services;

7. Skilled Nursing Services, and:

a. services furnished to two recipients who choose to share supports will be reimbursed at 75 percent of the full rate for each recipient;

b. services furnished to three recipients who choose to share supports will be reimbursed at 66 percent of the full rate for each recipient;

c. nursing consultations are offered on an individual basis only;

8. Supported Employment, One-to-One Intensive and Mobile Crew/Enclave.

B. The following services are to be paid at cost, based on the need of the individual and when the service has been prior authorized and on the CPOC:

1. environmental accessibility adaptations;

2. specialized medical equipment and supplies; and

3. transitional expenses.

C. The following services are paid through a per diem:

1. substitute family care;

2. residential habitation-supported independent living;

and

3. supported employment-follow along.

D. Maintenance of the personal emergency response system is paid through a monthly rate.

E. Installation of the personal emergency response system is paid through a one time fixed cost.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1652 (August 2007).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0708#091

RULE

**Department of Natural Resources
Office of Conservation**

Exploration and Production Waste
(LAC 43:XIX.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and Title 30 of the Louisiana Revised Statutes of 1950 (R.S. 30:4 et seq.), the Louisiana Office of Conservation hereby amends LAC 43:XIX. Chapter 3 (Statewide Order No. 29-B) Pollution Control-Onsite Storage, Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations). These amendments include:

1. all references in Chapter 3 to Nonhazardous Oilfield Waste (NOW) are changed to read Exploration and Production (E&P) waste;
2. all references in Chapter 3 to Forms UIC-15, UIC-15-CP, and UIC-16 are changed to refer to Engineering Division forms (ENG-15, ENG-15-CP, and Eng-16) that replaced those of the Underground Injection Control (UIC) section;
3. the manufactured liner thickness requirements of §301, incorrectly listed as 10 mm, is corrected to read 10 mil.;
4. all references in Chapter 3 to the testing procedures used to analyze oilfield waste are changed to refer to the testing procedures contained in the recently revised manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste";
5. the reference in §311.D to radioisotope sampling and testing being conducted in accordance with the requirements of the Department of Environmental Quality, NORM Regulatory Guide is changed to read "shall comply with the requirements of the Department of Environmental Quality";
6. the "Air Quality Division" of the Department of Environmental Quality, referenced in §307.C.4, is changed to read "Air Permits Division";
7. the new §313.G provides for alternative method of pit closure by allowing properly processed exploration and production waste to be used for onsite land development purposes; and
8. the passive pit closure criteria of §313.H is changed to reflect current effluent guidelines to be used in passive pit closure, provide current contact information for the Department of Wildlife and Fisheries and the Department of Environmental Quality, and reference the proper forms to be used in registering the pit.

Title 43

NATURAL RESOURCES

**Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B**

Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)

Editor's Note: Statewide Order 29-B was originally codified in LAC 43:XIX as §129. In December 2000, §129 was restructured into Chapters 3, 4 and 5. Chapter 3 contains the oilfield pit regulations. Chapter 4 contains the injection/disposal well regulations. Chapter 5 contains the commercial facility regulations. A cross-reference chart in the December 2000 *Louisiana Register*, page 2798, indicates the locations for the rules in each existing Section.

§301. Definitions

Coastal Area—that area comprising inland tidal waters, lakes bounded by the Gulf of Mexico, and salt water marshes and more particularly identified as the intermediate marshes, brackish marshes, and saline marshes on the Vegetative Type Map of the Louisiana Coastal Marshes, published by the Louisiana Department of Wildlife and Fisheries, August, 1978.

Community Saltwater Disposal Well or System—as defined in §501.

Contamination—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable for their intended purposes.

Elevated Wetland Area—a wetland area which is not normally inundated with water and where land mass and levee material are available for mixing with waste fluids during closure of a pit.

Exempt Pits—compressor station pits, natural gas processing plant pits, emergency pits, and salt dome cavern pits located in the coastal area.

E&P Waste—exploration and production waste.

Exploration and Production Waste—as defined in §501.

Groundwater Aquifer—water in the saturated zone beneath the land surface that contains less than 10,000 mg/l TDS.

Hydrocarbon Storage Brine—well water, potable water, rainwater, or brine (partially saturated to completely saturated) used as a displacing fluid in hydrocarbon storage well operations.

Manufactured Liner—any man-made synthetic material of sufficient size and qualities to sustain a hydraulic conductivity no greater than 1×10^{-7} cm/sec after installation and which is sufficiently reinforced to withstand normal wear and tear associated with the installation and pit use without damage to the liner or adverse affect on the quality thereof. For purposes of this Chapter and Chapter 5, a manufactured liner used in pit construction must meet or exceed the following standards.

Parameter or Test Standard	
Thickness (average)	> 10 mil (0.01 in)
Breaking Strength (Grab Method)*	90 lbs
Bursting Strength*	140 psi
Tearing Strength*	25 lbs
Seam Strength*	50 lbs

*Testing is to be performed according to ASTM method D-751, latest revision.

Mining Water—well water, potable water, rainwater, or unsaturated brine which is injected into a brine solution mining well for recovery as saturated brine.

Onsite—for purposes of this Section, on the same lease or contiguous property owned by the lessor, or within the confines of a drilling unit established for a specific well or group of wells.

Operation of Oil and Gas Facilities—as used in this Section, all oil and gas wells, disposal wells, enhanced recovery injection wells and facilities, flowlines, field storage and separation facilities, natural gas processing and/or gas sweetening plants, and compressor stations.

Pit—for purposes of this Chapter, a natural topographic depression or man-made excavation used to hold produced water or other exploration and production waste, hydrocarbon storage brine, or mining water. The term does not include lined sumps less than 660 gallons or containment dikes, ring levees or firewalls constructed around oil and gas facilities.

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.

Production Pits—either earthen or lined storage pits for collecting E&P Waste sediment periodically cleaned from tanks and other producing facilities, for storage of produced water or other exploration and production wastes produced from the operation of oil and gas facilities, or used in conjunction with hydrocarbon storage and solution mining operations as follows.

1. *Burn Pits*—earthen pits intended for use as a place to temporarily store and periodically burn exploration and production waste (excluding produced water) collected from tanks and facilities.

2. *Compressor Station Pits*—lined or earthen pits intended for temporary storage or disposal of fresh water condensed from natural gas at a gas pipeline drip or gas compressor station.

3. *Natural Gas Processing Plant Pits*—lined or earthen pits used for the storage of process waters or stormwater runoff. No produced water may be stored in a natural gas processing plant pit.

4. *Produced Water Pits*—lined or earthen pit used for storing produced water and other exploration and production wastes, hydrocarbon storage brine, or mining water.

5. *Washout Pits*—lined earthen pits used to collect wash water generated by the cleaning of vacuum truck tanks and other vessels and equipment only used to transport exploration and production waste. Any materials other than E&P Waste are prohibited from being placed in such pits.

6. *Well Test Pits*—small earthen pits intended for use to periodically test or clean up a well.

7. *Emergency Pits*—lined or earthen pits used to periodically collect produced water and other E&P Waste fluids only during emergency incidents, rupture or failure of other facilities.

8. *Onshore Terminal Pits*—lined or earthen pits located in the coastal area used for storing produced water at

terminals that receive crude oil and entrained water by pipeline from offshore oil and gas production facilities.

9. *Salt Dome Cavern Pits*—lined or earthen pits located in the coastal area associated with the storage of petroleum products and petroleum in salt dome caverns.

Reserve Pits—temporary earthen pits used to store only those materials used or generated in drilling and workover operations.

Submerged Wetland Area—a wetland area which is normally inundated with water and where only levee material is available for mixing with waste fluids during closure of a pit.

Underground Source of Drinking Water (USDW)—for the purpose of administering these rules and regulations is defined in §403.B.

Upland Area—an area which is not identified as a wetland and includes farm land, pasture land, recreational land, and residential land.

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 26:2798 (December 2000), amended LR 33:1653 (August 2007).

§303. General Requirements

A. Produced water generated from the drilling and production of oil and gas wells shall be disposed of into subsurface formations not productive of hydrocarbons, unless discharged or disposed of according to the provisions of §303.E or transported offsite in accordance with LAC 43:XIX, Subpart 1, Chapter 5.

B. Produced water may be disposed of by subsurface injection into legally permitted or authorized operators saltwater disposal wells, commercial saltwater disposal wells, enhanced recovery injection wells, community saltwater disposal wells, or gas plant disposal wells. The use of hydrocarbon storage brine and mining water in storage and/or mining operations is not considered to be disposal.

C. Contamination of a groundwater aquifer or a USDW with E&P Waste is strictly prohibited. In addition, the injection of E&P Waste into a groundwater aquifer or a USDW is strictly prohibited.

D. Produced water and other E&P Waste generated in the drilling and production of oil and gas wells shall not be disposed of into a zone producing or productive of hydrocarbons unless such disposal is approved by the Office of Conservation after a public hearing or unless prior approval to use the proposed zone for such disposal can be documented.

E. The discharge of produced water or other E&P Waste (including drilled solids) into manmade or natural drainage or directly into state waters is allowed only in conformance with any applicable state or federal discharge regulatory program.

F. The use of closed E&P Waste storage systems is encouraged by the Office of Conservation; therefore, the use of new or existing pits to store produced water, drilling fluids, and other E&P Waste generated from the drilling and production of oil and gas wells is prohibited unless:

1. notification for each pit is submitted to the Office of Conservation as outlined in §305; and

2. pits are in conformance with standards set forth in §307.

G. Unless exempted from liner requirements in §303.K.8 or §303.M below, all existing produced water pits, onshore terminal pits, and washout pits which are to be utilized in the operation of oil and gas or other facilities must be shown to comply with the liner requirements of §307.A.1.a or be permanently closed in accordance with the pit closure criteria of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

H. All existing pits which are not to be utilized in the operation of oil and gas or other facilities must be permanently closed according to the requirements of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

I. Operators of existing pits are required to comply with all applicable operational requirements of §307.A.2 and 4, §307.B.1, 2, and 3, §307.C.2, 4, 5, and 6, §307.D.2, 4, and 5, §307.E.1, 3, 4, and 6, and §307.F.1 and 3.

J. Production pits, except for those identified in §303.K.1 and §303.M below, may not be constructed in a "V" or A zone as determined by flood hazard boundary or rate maps and other information published by the Federal Emergency Management Agency (FEMA), unless such pits have levees which have been built at least 1 foot above the 100-year flood level and able to withstand the predicted velocity of the 100-year flood. Location, construction and use of such pits is discouraged.

K. Production pits located in the coastal area shall be subject to the following requirements.

1. Except for exempt pits, no production pit may be constructed in the coastal area after June 30, 1989.

2. Production pits located in the coastal area shall be closed in compliance with §311 and §313 by January 1, 1993 with the following exceptions:

a. exempt pits as such term is defined in §301;

b. any onshore terminal pit that was in existence on June 30, 1989, provided such pit has an approved Louisiana Water Discharge Permit System (LWDPS) permit applicable thereto. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307;

c. any production pit which is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit is not subject to the closure requirements of §311 and §313 until January 1, 1995 or until expiration of such permit which ever occurs first. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307.

3. Operators of existing production pits located in the coastal area shall submit Form ENG 15-CP to the Office of Conservation by January 1, 1991. Pits closed prior to October 20, 1990 are not considered existing pits for purposes hereof.

4. Operators intending to construct an exempt pit shall submit Form ENG-15-CP to the Office of Conservation at least 10 days prior to start of construction thereof.

5. Production pits located within the coastal area must maintain a levee with an elevation of at least 2 feet above mean high tide, the liquid level in pit(s) shall not be permitted to rise within 2 feet of top of pit levee or walls, and any surface water discharge from an active pit must be

done in accordance with appropriate state or federal regulatory programs. Such discharge must be piped to open water (within the marsh) that receives good flushing action and shall not otherwise significantly increase the salinity of the receiving body of water or marsh. Further, unless otherwise indicated in §303.K.6, 7, 8 and 9, production pits located in the coastal area shall comply with the standards and operational requirements set forth in §307.

6. Burn pits, compressor station pits, natural gas processing plant pits, and well test pits located in the coastal area are exempt from the liner requirements of §307.A.

7. Salt dome cavern pits are exempt from the liner requirements of §307.A.

8. Produced water pits, washout pits, and onshore terminal pits located in the coastal area shall comply with the liner requirements of §307.A unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

9. Emergency pits located in the coastal area shall comply with the requirements of §307.E unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

10. Any production pit which is not subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit on October 20, 1990 shall submit a closure plan to the Office of Conservation by January 1, 1991.

L. Within six months of the completion of the drilling or workover of any permitted well, the operator (generator) shall certify to the commissioner by filing Form ENG-16 the types and number of barrels of E&P Waste generated, the disposition of such waste, and further certify that such disposition was conducted in accordance with applicable rules and regulations of the Office of Conservation. Such certification shall become a part of the well's permanent history.

M. Based upon the best practical technology, production pits located within an 'A' zone (FEMA) which meet the following criteria are not subject to the levee height requirements of §303.J above or the liner requirements of §307.A.1:

1. pit size is less than or equal to 10' x 10' x 4' deep;

2. such pit contains only produced brine; and

3. such pit is utilized for gas wells producing less than 25 mcf per day and less than or equal to one barrel of saltwater per day (bswpc).

N. Evidence of contamination of a groundwater aquifer or USDW may require compliance with the monitoring program of §309, compliance with the liner requirements of §307.A.1, or immediate closure of the pit.

O. The commissioner may authorize, without the necessity of a public hearing, the disposal of produced water into a zone producing or productive of hydrocarbons upon application of the operator of an existing or proposed disposal well. Such written request shall include the following:

1. the appropriate permit application as per the requirements of LAC 43:XIX.Chapter 4;

2. evidence establishing the production mechanism of the proposed disposal zone is aquifer expansion (water drive);

3. evidence demonstrating the subject disposal well is not productive in the proposed disposal zone;

4. a plat showing the subject disposal well is not located within 330' of a property line as it is defined in LAC 43:XIX.1901;

5. written consent of all operators of record with existing wells within a 1/4 mile radius of the subject well; and

6. such other information which the commissioner may require.

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 26:2799 (December 2000), amended LR 30:254 (February 2004), LR 33:1654 (August 2007).

§305. Notification

A. Existing Pits

1. Each pit which was constructed prior to January 20, 1986, is an existing pit. Use of an existing pit is prohibited unless the operator has reported that pit to the Office of Conservation by July 20, 1986, according to the requirements of this Paragraph. Notification shall contain the information requested below. Pits closed prior to January 20, 1986, are not considered existing pits.

2. Operators of existing pits must submit the following information to the Office of Conservation by July 20, 1986:

a. for each existing pit to be utilized in the operation of oil and gas facilities, the information requested in §305.D.1-8 below;

b. for each existing pit not to be utilized in the operation of oil and gas facilities the information requested in §305.D.1-6 below;

c. a plan and schedule of abandonment for closure of pits identified in §305.A.2.b above. Such plan must comply with the provisions of §303.H, §311, and §313. Failure to comply with the plan in a timely manner will subject an operator to appropriate civil penalties.

3. Operators of existing pits in the coastal area shall comply with the requirements of §303.K.3.

B. New Pits. Except for reserve pits, operators must notify the Office of Conservation of the intent to construct new pits at least 10 days prior to start of construction. Notification shall contain all information requested in §305.D or §303.K.4 as appropriate. The Office of Conservation may inspect any proposed pit site prior to or during construction; however, initial use of the completed pit need not be deferred if no inspection is made.

C. Reserve Pit Notification. For reserve pits used in drilling and workover operations, notification requirements of this rule shall be satisfied by application for a drilling or work permit.

D. Notification Information Required Form ENG-15

1. Name of Facility Pit (indicate whether new or existing)

2. Field Designation, if applicable

3. Section, Township and Range (include approximate footage location of pit center)

4. Parish Name

5. Type of Pit (consistent with definitions in §301)

6. Size of Pit (length, width and depth)

7. Type of Liner, if applicable

8. Certification that each pit will or does conform to standards stipulated under §307 applicable to that type pit

and that such compliance will be within the time frame described in §303.G, H, and I, if applicable.

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 26:2801 (December 2000), amended LR 33:1656 (August 2007).

§307. Pit Classification, Standards, and Operational Requirements

A. Produced Water, Onshore Terminal, and Washout Pits

1. Except where exempted by §303.K.8 and §303.M, groundwater aquifer and USDW protection for above-listed pits shall be provided by one of the following.

a. A liner along the bottom and sides of pits which has the equivalent of 3 continuous feet of recompacted or natural clay having a hydraulic conductivity no greater than 1×10^{-7} cm/sec. Such liners include, but are not limited to the following.

i. *Natural Liner*—natural clay having a hydraulic conductivity meeting the requirements of §307.A.1.a above.

ii. *Soil Mixture Liner*—soil mixed with cement, clay-type, and/or other additives to produce a barrier which meets the hydraulic conductivity requirements of §307.A.1.a above.

iii. *Recompacted Clay Liner*—in situ or imported clay soils which are compacted or restructured to meet the hydraulic conductivity requirements of §307.A.1.a above.

iv. *Manufactured Liner*—synthetic material that meets the definition in §301 and is equivalent or exceeds the hydraulic conductivity requirements of §307.A.1.a above. Pits constructed with a manufactured liner must have side slopes of 3:1 and the liner at the top of the pit must be buried in a 1' wide and 1' deep trench. A sufficient excess of liner material shall be placed in the pit to prevent tearing when filled with E&P Waste.

v. *Combination Liner*—a combination of two or more types of liners described in this Section which meets the hydraulic conductivity requirements of §307.A.1.a above.

b. Any other alternate groundwater aquifer and USDW protection system acceptable to the Office of Conservation.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphon or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal and/or state regulatory programs are not considered to be pollution or contamination as used herein.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overfill, and leakage of E&P Waste to the environment.

5. When use of a pit will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of all fluids in a manner compatible with all applicable regulations and

closed in accordance with §303.F and G within six months of abandonment.

B. Reserve Pits

1. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal or state regulatory programs are not considered to be pollution or contamination as used herein.

2. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

3. Operators shall prevent the placing of produced water, waste oil, trash, or any other material into a reserve pit which would increase the difficulty in clean-up of the pit or otherwise harm the environment. Such material shall be properly stored and disposed of according to applicable state or federal regulations.

4. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of completion of drilling or work over operations.

C. Burn Pits

1. Pits shall be constructed in such a manner as to keep fire hazards to a minimum, and in no case shall be located less than 100 feet from a well location, tank battery, separator, heater-treater, or any and all other equipment that may present a fire hazard.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Any burning process shall be carried out in conformance with applicable air quality regulations. Notification as required by said regulation shall be made to the Air Permits Division, Department of Environmental Quality.

5. No produced water, radioactive material (except industry-accepted and license-approved radioactive material utilized in oilfield operations, and radioactive material naturally occurring in the produced fluids), or other noncombustible waste products shall be placed in pits, except water or emulsion which may be associated with crude oil swabbed or otherwise produced during test operations, or during tank or other vessel cleaning operations. E&P Waste must be removed or burned periodically to assure that storage of materials in the pit is kept to a minimum.

6. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

7. When use of pits will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

D. Well Test Pits

1. Pits shall be constructed in such a manner as to keep fire hazards to a minimum, and in no case shall be located less than 100 feet from a well location, tank battery, separator, heater-treater, or any and all other equipment that may present a fire hazard.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Within 30 days after completion of a well test, pits shall be emptied of produced fluids and must remain empty of produced fluids during periods of nonuse.

5. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit walls or dikes. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

6. When use of pits will be permanently discontinued, the Office of Conservation shall be notified in writing. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

E. Emergency Pits

1. Groundwater aquifer and USDW protection for emergency pits shall be evaluated on a case-by-case basis. Operators who intend to utilize existing or new emergency pits without liners must demonstrate by written application to the Office of Conservation that groundwater aquifer and USDW contamination will not occur; otherwise, emergency pits shall be lined. Applications to demonstrate unlined pits will not contaminate groundwater aquifers and USDW's shall at a minimum address the following.

a. *Emergency Incident Rate*—operator shall estimate the number of times a pit will be utilized each year. A detailed discussion of the facility operation and reasons for the emergency incident rate must be addressed.

b. *Soil Properties*—operator shall describe and evaluate soil properties onsite. Soil hydraulic conductivity and physical properties must be addressed to assess potential groundwater aquifer and USDW impacts.

c. *Groundwater Aquifer Evaluation*—water quality, groundwater aquifer, and USDW depth shall be evaluated.

d. *Produced Water Composition* (total dissolved solids and oil and grease)—must be determined to assess potential impacts on the site.

2. All emergency pits required to be lined must conform to hydraulic conductivity requirements in §307.A.1 above.

3. No produced water or any other E&P Waste shall be intentionally placed in any emergency pit not meeting the hydraulic conductivity requirements (1×10^{-7} cm/sec for 3 continuous feet of clay) except in the case of an emergency incident. In emergency situations, notice must be given to the Office of Conservation within 24 hours after discovery of the incident. Produced water and any other E&P Waste must be removed from the pit within seven days following termination of the emergency situation.

4. Pits shall be protected from surface waters by levees and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Surface discharges of pit contents under federal or state permits are not considered to be pollution or contamination as used herein.

5. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pits as provided under §305.B.

6. Liquid level in pits shall not be permitted to rise within 2 feet of top of pit levees. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overfill, and leakage of E&P Waste to the environment.

7. When use of pits will be permanently discontinued, the Office of Conservation shall be notified in writing. After notification to the Office of Conservation, pits shall be emptied of all fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

F. Natural Gas Processing Plant Pits, Compressor Station Pits, and Salt Dome Cavern Pits

1. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphon or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal and/or state regulatory programs are not considered to be pollution or contamination as used herein.

2. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

3. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overfill, and leakage of E&P Waste to the environment.

4. When use of a pit will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of all fluids in a manner compatible with all applicable regulations and closed in accordance with §311 and §313 within six months of abandonment.

G. Office of Conservation Corrective Action and Closure Requirement. Should the Office of Conservation determine that continued operation of pits specified in this Subparagraph may result in contamination of a groundwater aquifer or a USDW, or the discharge of fluids into man-made or natural drainage or directly into state waters, or contamination of soils outside the confines thereof, further use of the pit shall be prohibited until conditions causing or likely to cause contamination have been corrected. If

corrective measures are not satisfactorily completed in accordance with an Office of Conservation compliance order or schedule, the commissioner may require closure of the pit. When an order for closure is issued, a pit shall be closed in accordance with §311 and §313 and the operator must comply with any closure schedule issued 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 26:2801 (December 2000), amended LR 33:1656 (August 2007).

§309. Monitoring Program

A. Upon a determination by the operator or the Office of Conservation that any pit subject to this rule is likely to contaminate a groundwater aquifer or a USDW, the Office of Conservation shall require the timely submission of a plan for the prevention of such contamination. Such plan may include using an under-built drainage and collection system, monitoring wells, and/or other means that the Office of Conservation may approve to prevent or detect contamination. Any required monitor wells shall be registered with the appropriate state agency.

B. When required by the Office of Conservation, monitoring shall be conducted on a quarterly schedule. A written report summarizing the results of such monitoring shall be submitted to the Office of Conservation within 30 days of the end of each quarter.

C. If monitoring of a groundwater aquifer or USDW indicates contamination due to a discharge from a pit, the owner or operator shall immediately notify the Office of Conservation. Within 30 days, the operator shall empty the pit of all E&P Waste and submit a remedial plan for prevention of further contamination of any groundwater aquifer or any USDW. Upon approval, the remedial plan shall be implemented by the operator and monthly progress reports, reviewing actions taken under the plan and their results, will be filed with the Office of Conservation until all actions called for in the plan have been satisfactorily completed.

D. Notification received by the Office of Conservation, pursuant to §309.A, B, or C above, of any contamination of a groundwater aquifer or a USDW as the possible result of a discharge, or information obtained by the exploitation of such notification shall not be used against the reporting owner or operator in any criminal action, including but not limited to those provided for by Louisiana Revised Statutes 30:18, except in a prosecution for perjury or for giving a false statement.

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 26:2803 (December 2000), amended LR 33:1658 (August 2007).

§311. Pit Closure

A. Pits must be closed properly to assure protection of soil, surface water, groundwater aquifers and USDW's. Operators may close pits utilizing onsite land treatment, burial, solidification, onsite land development, or other techniques approved by the Office of Conservation only if done so in compliance with §313 and §315. Otherwise, all E&P Waste must be manifested according to §511 and transported offsite to a permitted commercial facility.

B. Liability for pit closure shall not be transferred from an operator to the owner of the surface land(s) on which a pit is located.

C. For evaluation purposes prior to closure of any pit and for all closure and onsite and offsite disposal techniques, excluding subsurface injection of reserve pit fluids, exploration and production waste (pit contents) must be analyzed for the following parameters:

1. pH;
2. total metals content (ppm) for:
 - a. arsenic;
 - b. barium;
 - c. cadmium;
 - d. chromium;
 - e. lead;
 - f. mercury;
 - g. selenium;
 - h. silver;
 - i. zinc;
3. oil and grease (percent dry weight);
4. soluble salts and cationic distributions:
 - a. electrical conductivity, EC in mmhos/cm (millimhos);
 - b. sodium adsorption ratio, SAR;
 - c. exchangeable sodium percentage, ESP (percent);
 - d. cation exchange capacity, CEC (milliequivalents/100 gm soil).

5. Radioisotopes if such pit is located in the coastal area and is closed after October 20, 1990.

D. Laboratory Procedures for Exploration and Production Waste Analyses

1. For soluble salts, cationic distributions, metals (except barium) and oil and grease (organics) samples are to be analyzed using standard soil testing procedures as presented in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

2. For barium analysis, samples are to be digested in accordance with the "True Total" method, as presented in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988 or latest revision).

3. For radioisotopes, the sampling and testing of pit sludges shall comply with the requirements of the Department of Environmental Quality.

E. Documentation of testing and closure activities, including onsite disposal of E&P Waste, shall be maintained in operator's files for at least three years after completion of closure activities. Upon notification, the Office of Conservation may require the operator to furnish these data for verification of proper closure of any pit. If proper onsite closure has not been accomplished, the operator will be required to bring the site into compliance with applicable requirements.

F. Reserve pits utilized in the drilling of wells less than 5,000 feet in depth are exempt from the testing requirements of §311.C and §313 provided the following conditions are met:

1. the well is drilled using only freshwater "native" mud which contains no more than 25 lbs/bbl bentonite, 0.5 lbs/bbl caustic soda or lime, and 50 lbs/bbl barite; and

2. documentation of the above condition is maintained in the operator's files for at least three years after completion of pit 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 26:2803 (December 2000), amended LR 33:1658 (August 2007).

§313. Pit Closure Techniques and Onsite Disposal of E&P Waste

A. Reserve pit fluids, as well as drilling muds, cuttings, etc. from holding tanks, may be disposed of onsite provided the technical criteria of §313.C, D, E, F, or G below are met, as applicable. All E&P Waste must be either disposed of onsite or transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5 or under the direction of the commissioner.

B. Prior to conducting onsite pit closure activities, an operator must make a determination that the requirements of this Subparagraph are attainable.

C. Unless specifically stated otherwise, all pit closure techniques in this Subparagraph, except solidification, waste/soil mixtures must not exceed the following criteria:

1. range of pH: 6-9 for land treatment and burial and trenching, 6-12 for onsite land development;
2. total metals content (ppm):

Parameter	Limitation
Arsenic	10
Barium	
Submerged Wetland Area	20,000
Elevated Wetland Area	20,000
Upland Area	40,000
Cadmium	10
Chromium	500
Lead	500
Mercury	10
Selenium	10
Silver	200
Zinc	500

D. Land Treatment. Pits containing E&P Waste may be closed onsite by mixing wastes with soil from pit levees or walls and adjacent areas provided waste/soil mixtures at completion of closure operations do not exceed the following criteria, as applicable, unless the operator can show that higher limits for EC, SAR, and ESP can be justified for future land use or that background analyses indicate that native soil conditions exceed the criteria.

1. In addition to the pH and metals criteria listed in §313.C above, land treatment of E&P Waste in submerged wetland, elevated wetland, and upland areas is permitted if the oil and grease content of the waste/soil mixture after closure is < 1 percent (dry weight).

2. Additional parameters for land treatment E&P Waste in elevated, freshwater wetland areas where the disposal site is not normally inundated:

- a. electrical conductivity (EC-solution phase): < 8 mmhos/cm;
- b. sodium adsorption ratio (SAR-solution phase): < 14;
- c. exchangeable sodium percentage (ESP-solid phase): 25 percent.

3. Additional parameters for land treatment of E&P Waste in upland areas:

- a. electrical conductivity (EC-solution phase): < 4 mmhos/cm;
- b. sodium adsorption ratio (SAR-solution phase): < 12;
- c. exchangeable sodium percentage (ESP-solid phase): < 15 percent.

E. Burial or Trenching. Pits containing E&P Waste may be closed by mixing the waste with soil and burying the mixture onsite, provided the material to be buried meets the following criteria:

1. the pH and metals criteria in §313.C above;
2. moisture content: < 50 percent by weight;
3. electrical conductivity (EC): < 12 mmhos/cm;
4. oil and grease content: < 3 percent by weight;
5. top of buried mixture must be at least 5 feet below ground level and then covered with 5 feet of native soil;
6. bottom of burial cell must be at least 5 feet above the seasonal high water table.

F. Solidification. Pits containing E&P Waste may be closed by solidifying wastes and burying it onsite provided the material to be buried meets the following criteria:

1. pH range: 6 - 12;
2. Leachate testing* for oil and grease: < 10.0 mg/l and chlorides < 500.0 mg/l

*NOTE: The leachate testing method for oil and grease is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

3. Leachate testing* for the following metals:

- a. arsenic < 0.5 mg/l;
- b. barium < 10.0 mg/l;
- c. cadmium < 0.1 mg/l;
- d. chromium < 0.5 mg/l;
- e. lead < 0.5 mg/l;
- f. mercury < 0.02 mg/l;
- g. selenium < 0.1 mg/l;
- h. silver < 0.5 mg/l;
- i. zinc < 5.0 mg/l;

*NOTE: The leachate testing method for metals is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

4. top of buried mixture must be at least 5 feet below ground level and covered with 5 feet of native soil;
5. bottom of burial cell must be at least 5 feet above the seasonal high water table;
6. solidified material must meet the following criteria*:

- a. unconfined compressive strength (Qu): > 20 lbs/in² (psi);
- b. permeability: < 1 x 10⁻⁶ cm/sec;
- c. wet/dry durability: > 10 cycles to failure.

*NOTE: Testing must be conducted according to ASTM or other approved methods prior to pit closure by solidification processes.

G. Onsite Land Development. Reserve pits containing E&P Waste may be closed by processing the waste material with Department of Environmental Quality approved stabilizing additives and using the mixture onsite to develop lease roads, drilling and production locations, etc. provided the following conditions have been met:

1. at least 72 hours prior to commencement of waste processing operations, written notification has been made to the Office of Conservation of the operator's intent to utilize this method of reserve pit closure. This notification shall include a detailed explanation of the methods used to generate the processed waste material, including but not limited to the types and volumes of additives to be used, amounts of processed waste material to be generated, the applications and locations onsite for which the processed waste material will be used, written approval from the surface owner of the property on which the processed waste material is to be applied; and any other pertinent information required by the commissioner;

2. E&P Waste shall not be processed in an unlined reserve pit with a bottom that extends to a depth deeper than 5 feet above the seasonal high water table;

3. the processed waste material meets the following analytical criteria:

- a. pH range of the mixture: 6-12;
- b. electrical conductivity (EC): < 8 mmhos/cm;
- c. oil and grease content: < 1 percent by weight;
- d. total metals content meeting the criteria of §313.C.2 above;
- e. leachate testing** for chloride concentration: < 500 mg/L; and,
- f. NORM concentrations do not exceed applicable DEQ criteria or limits;

*NOTE: The testing method for pH, EC, and metals shall conform to the requirements of §311.D and is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

**NOTE: The leachate testing method for metals is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

4. any pit remaining after the generation and application of the processed waste material shall be closed in conformance with the criteria of §313.D above; and

5. the Commissioner of Conservation, the Secretary of the Department of Natural Resources, and the State of Louisiana shall be held harmless from and indemnified for any and all liabilities arising from onsite land development using processed E&P Waste, and the operator of record and the surface owner shall execute agreements as the commissioner requires for this purpose.

H. Passive Closure

1. The Office of Conservation will consider requests for passive pit closure provided one of the following conditions exists:

- a. where pit closure would create a greater adverse environmental impact than if the pit were allowed to remain unreclaimed;
- b. where pit usage can be justified for agricultural purposes or wildlife/ecological management.

2. Operators requesting passive pit closure shall submit the following:

- a. an affidavit requesting passive pit closure for one of the reasons contained in §313. H.1;
- b. a copy of ENG-15 or ENG-15-CP with pit identification number shown thereon;

c. an affidavit of no objection from the Louisiana Department of Wildlife and Fisheries obtainable by contacting:

La. Department of Wildlife & Fisheries
P.O. Box 98000
Baton Rouge, LA 70898
Telephone: (225) 765-2819

d. where applicable, an affidavit of no objection from the Department of Natural Resources, Coastal Management Division, obtainable by contacting:

Department of Natural Resources
Coastal Management Division
P.O. Box 44487
Baton Rouge, LA 70804-4487
Telephone: (225) 342-7591

e. an affidavit of no objection from the landowner endorsing operator's request for passive pit closure;

f. a photograph of the pit in question;

g. an inspection of the pit signed by a conservation enforcement agent and a representative of the operator. The operator shall contact the applicable conservation district office to arrange date and time for inspection;

h. analytical laboratory reports of the pit bottoms and pit levees indicating conformance with applicable land treatment criteria set forth in §313.C and D;

i. an analytical laboratory report of the fluid contents of the pit indicating conformance with applicable state and federal effluent guidelines for oil and gas exploration and production. Contact the Department of Environmental Quality, Office of Environmental Services, (225) 219-3181 for information regarding effluent limitations.

3. The Commissioner of Conservation retains the right to grant exceptions to the requirements of §313.H.2 as he deems appropriate.

I. Offsite Disposal of E&P Waste

1. Except for produced water, drilling, workover and completion fluids, and rainwater which may be transported by an oil and gas operator to a community well or an operators permitted Class II disposal well or discharged to surface waters where authorized, exploration and production waste shall not be moved offsite for storage, treatment, or disposal unless transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5 or under the direction of the commissioner.

2. The criteria for land treatment, burial, solidification, or onsite generation of reuse material listed above will apply, as appropriate, to the onsite disposal of any exploration and production waste remaining onsite.

3. E&P Waste that fails to meet the criteria of this Paragraph for onsite disposal shall be moved offsite by the operator to a permitted commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5.

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 26:2804 (December 2000), amended LR 33:1659 (August 2007).

James H. Welsh
Commissioner

0708#098

RULE

Department of Insurance Office of the Commissioner

Regulation 81—Military Personnel Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit Program (LAC 37:XIII.9511 and 9519)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Insurance ("LDOI") has amended the "Louisiana Application for Military Discount" form that acts as the documentary proof required for a person to verify eligibility for the discount. The amended form would still require the name of the insured's unit commander for verification purposes, but would no longer require the signature of the unit commander.

Pursuant to R.S. 49:953.A.(1)(a)(vii) the commissioner for the LDOI states that he has prepared a preamble that explains the basis and rationale for the amendment to Regulation 81 and summarizes the information and data supporting the amendment to Regulation 81. To facilitate public access to this preamble the commissioner hereby restates the preamble herein, to wit: The amendment to Regulation 81 is taken 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., and pursuant to R.S. 49:953.A.(1)(a). The LDOI amends Regulation 81 to implement changes to the Military Personnel Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit Program that automobile insurance carriers are required under R.S. 22:1425 to provide to active military personnel based in Louisiana. Regulation 81 provided an application form for active military personnel based in Louisiana that acts as the documentary proof required for a person to verify eligibility for the discount. The amended form would still require the name of the insured's unit commander for verification purposes, but would no longer require the signature of the unit commander. Thus, in furtherance of the amended requirements of R.S. 49:953.A.(1)(a) the commissioner intends to amend Regulation 81 to implement a new form that will no longer require the signature of the unit commander to clarify the documentary evidence that active military personnel are required to provide to the insurance carrier to demonstrate eligibility for the discount as well as the record retention requirements of the insurance carrier to facilitate any subsequent investigation and compliance audit by the LDOI of the military discount program.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 95. Regulation 81—Military Personnel Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit Program

§9511. Premium Discount; Proof of Eligibility

A. - D. ...

E. The initial Louisiana Application for Military Discount shall be properly executed by the applicant/AMP and delivered to the insurer. The insurer is required to maintain the original and all subsequent renewals on file for inspection, verification and audit by the LDOI to ensure that the applicant/AMP is entitled to the premium discount mandated by R.S. 22:1425.A.

F. - F.3. ...

G. If single or married AMP are deployed out-of-state or overseas, the insurer is authorized to accept the "Louisiana Application for Military Discount" if it is properly filled out by any one of the persons who is in a filial relationship to the AMP, to wit: spouse, mother, or father, or any brother, sister, aunt or uncle who has attained the age of majority.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 22:3 and LSA-R.S. 22:1425.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:673 (March 2005), amended LR 32:94 (January 2006), LR 33:1661 (August 2007).

§9519. Louisiana Application for Military Discount—Appendix

LOUISIANA APPLICATION FOR MILITARY DISCOUNT

Name of Insurance Company Policy No. or Application No.

READ THIS DOCUMENT CAREFULLY BEFORE SIGNING. If you have any questions about this "Louisiana Application for Military Discount" form ask your agent for an explanation or contact the Louisiana Department of Insurance at (800) 259-5300 or (225) 342-5900.

You must complete all sections on this form. If the spouse or dependent sections are not applicable, you must check the N/A box next to the associated fields.

Full Name of Active Military Personnel Date

Date of Birth Home Phone

Home Address

Name of Spouse N/A Spouse Date of Birth N/A

(if not applicable, check N/A) (if not applicable, check N/A)

Name and Date of Birth of Dependents (if not applicable, check N/A) N/A

Branch of Service Rank

Name of Unit Unit Commander

Unit Address Unit Phone

Order No Date of Order

Active Duty Station Military Job

The undersigned hereby certifies that he/she is on active duty and permanently based in Louisiana and qualifies as "active military personnel" (AMP) as defined by LSA-R.S. 22:1425 and Regulation 81, and is eligible for the military discount set forth in LSA-R.S. 22:1425 for personal automobile liability insurance policy. The AMP further certifies that the information provided in this "Louisiana Application for Military Discount" form is true and correct and that he/she will promptly notify his/her automobile insurer of any change in the above information. The AMP acknowledges that any false, fraudulent or misleading statement may subject him/her to civil and criminal penalties, including those penalties set

forth in LSA-R.S. 22:1243, and any applicable provisions of Title 14, the Louisiana Criminal Code.

Signature of Active Military Personnel (AMP)

Print Name of Active Military Personnel (AMP)

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1425.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:97 (January 2006), amended LR 33:1662 (August 2007).

James J. Donelon
Commissioner

0708#041

RULE

**Department of Insurance
Office of the Commissioner**

**Regulation 90—Payment of Pharmacy
and Pharmacist Claims
(LAC 37:XIII.Chapter 115)**

Under the authority of Louisiana Insurance Code, R.S. 22:250.51 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance has adopted Regulation 90 to establish standards and procedures to be used for the timely payment and processing of claims submitted by a pharmacist or pharmacy for reimbursement from health insurance issuers, their agents, or any party responsible for payment of prescription drugs, other products and supplies, and pharmacist services.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 115. Regulation 90—Payment of Pharmacy
and Pharmacist Claims**

§11501. Purpose

A. The purpose of Regulation 90 is to implement R.S. 22:250.51-62 relative to the making of the prompt and correct payment for prescription drugs, other products and supplies, and pharmacist services covered under insurance or other contracts that provide for pharmacy benefits. It is the intent of the legislature that payments for covered prescription drugs, other products and supplies, and pharmacist services provided by pharmacists and pharmacies are paid timely. It is also the intent of the legislature that the provisions of this Part shall be interpreted to achieve these ends. Additionally, these statutory provisions establish the intent of the legislature to assure that pharmacists and pharmacies who submit claims for covered prescription drugs, other products and supplies, and pharmacist services are paid timely and payments are based on calculations that reflect nationally recognized pricing references such as average wholesale price and maximum allowable cost.

B. To carry out the intent of the legislature and assure full compliance with the applicable statutory provisions, this regulation sets forth the standards for payment of claims for prescription drugs, pharmaceutical products and pharmacist services on behalf of health insurance issuers including,

health maintenance organizations, to pharmacies and pharmacists and supersedes current regulations on uniform claim forms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1662 (August 2007).

§11503. Scope and Applicability

A. Except as otherwise specifically provided, the requirements of Regulation 90 apply to all health insurance issuers including health maintenance organizations that offer coverage in their insurance contracts for pharmacy services in accordance with the statutory requirements of Part VI-F of Chapter One of Title 22 of the Louisiana Revised Statutes of 1950, R.S. 22:250.51 et seq. Additionally, Regulation 90 applies to all contracts between a pharmacist and/or, pharmacy and/or a health insurance issuer, its agent, or any other party responsible for reimbursement for prescription drugs, other products and supplies, and pharmacist services. Any and all contracts entered into after July 1, 2005 shall be required to be in compliance with R.S. 22:250.51 et seq. Additionally, Regulation 90 shall apply to all contracts in existence prior to July 1, 2005. Regulation 90 shall include but not be limited to those contracts that contain any automatic renewal provisions, renewal provisions that renew if not otherwise notified by a party, any provision that allows a party the opportunity to opt out of the contract, evergreen contracts, or rollover contracts and therefore these contracts shall be required to come into compliance. Regulation 90 shall apply to all contracts as enumerated above as of the first renewal date, first opt out date, first rollover date or first annual anniversary on or after July 1, 2005.

B. Notwithstanding any provision to the contrary in any contract, evergreen contract, rollover contract or any agreement or contract that contains any automatic renewal provision, renewal provision that renews if not otherwise notified by a party or any provision that allows a party the opportunity to opt out of the contract, any and all contracts shall comply with Regulation 90 as of January 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1663 (August 2007).

§11505. Definitions

Agent—a person or entity designated by a health insurance issuer to act on behalf of, or in place of, a health insurance issuer for purposes of the payment and adjudication of claims for prescription drugs, other products and supplies, and pharmacist services.

Commissioner—the Commissioner of Insurance

Covered Benefits—benefits available to a covered person under an insurance policy, benefit plan, or other contract for coverage of pharmacy benefits which also includes any covered prescription drugs, other products and supplies, and pharmacist services. The term shall not include prescription drug benefits offered through and regulated by the Centers for Medicare and Medicaid Services.

Covered Person—an insured, enrollee, member, or subscriber. In the case of a minor, the term includes an insured or legal guardian authorized to act in the best interest of such minor and therefore acts on behalf of the covered person.

Date upon Which a Correctly Completed Uniform Claim Is Furnished—the date the non-electronic uniform claim form is received by the health insurance issuer, health maintenance organization, its agent or other party that makes payment directly to the pharmacy, pharmacist, insured, member, subscriber, or enrollee. For health insurance issuer examinations, the department will use the postmark date of claims to determine if the date of receipt reasonably reflects the date claims are actually received by the health insurance issuers.

Date upon Which an Electronic Claim Is Adjudicate—the date an electronic claim is determined to be payable by the health insurance issuer, its agent or other party that makes payment directly to the pharmacy, pharmacist, insured, member, subscriber, or enrollee. For health insurance issuer examinations, the department will review the date the electronic claim was submitted and adjudicated by health insurance issuers.

Department—the Louisiana Department of Insurance.

Evergreen Contract—includes but is not limited to the following:

1. a contract for an initial fixed term that contains a provision extending the terms of the existing contract beyond its expiration date, for a definite or indefinite period of time, and is terminable at the option of a party with notice provided to the other party within a specified period of time;
2. perpetual agreements that contain an initial fixed term and terminable only by written notice from a party given within a specified period of time;
3. a contract with an initial term that is extended beyond its expiration date and terminable only by written notice from a party;
4. a contract that continues in perpetuity for either a definite or indefinite period of time that is terminable at the option of a party after giving required notice;
5. a contract with an initial term that is extended beyond its expiration date and continues in perpetuity until its duration specified in the contract or terminable only by written notice from a party.

Just and Reasonable Grounds Such as Would Put a Reasonable and Prudent Businessman on His Guard—an articulable set of facts, as opposed to mere speculation or assumption, that fully complies with established jurisprudence. For health insurance issuer examinations, the department will reasonably determine whether denials are based on an articulable set of facts.

Rollover—includes but is not limited to the following:

1. a contract for an initial fixed term that expires and is on or after expiration of the original fixed term, rolled over by affirmative action of a party to form a new contract or amend the existing contract for an additional period of time;
2. a contract that is formed or amended by affirmative action of a party on or after the expiration date of the existing contract;
3. a contract that can be rolled over by affirmative action of a party at any time after the existing contract's original terms or any extension of it that was entered into prior to (or after) its original expiration date;
4. an existing contract with specific terms that expire and is extended by affirmative action taken by a party to the

contract, after the expiration or extension of the existing contract, to either form a new contract or amend the contract for an additional specified term;

5. an existing contract with specific terms that expire and is extended by affirmative action taken by a party to the contract, after expiration of the existing contract, to either form or amend the contract for an additional specified term.

Paid Date—the date a claim is adjudicated and any amount due and payable is released by the health insurance issuer, its agent, or other third party that makes payment directly to the pharmacy, pharmacist, member, enrollee, subscriber or policyholder. Any difference between the date of adjudication and the date the payment is released is required to be documented in the health insurance issuer's claim handling procedures filed with the department.

Prohibited Billing Activities—those activities outlined in R.S. 22:250.41 et seq.

Uniform Claim Forms--are forms prescribed by the department and shall include the National Uniform Bill-82 (UB-82) or its successor for appropriate hospital services, and the current Health Care Financing Administration Form 1500 or its successor for physical and other appropriate professional services. If, after consultation with insurers, providers, and consumer groups, the commissioner determines that the state assignable portions of either form should be revised, he shall make a revision request to the State Uniform Bill Implementation Committee and if approved, prescribe the use of the revised form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1663 (August 2007).

§11507. Claim Handling Procedures for Non-Electronic Claims

A. Pursuant to R.S. 22:250.53.B, health insurance issuers or health maintenance organizations are required to submit to the Department, for approval, a "Prompt Payment Procedures Plan for Non-Electronic Pharmacy Claims" detailing statutory compliance for the receipt, acceptance, processing, payment of non-electronic claims and procedures in place to ensure compliance with R.S. 22:250.41 et seq. The Prompt Payment Procedures Plan for Non-Electronic Pharmacy Claims shall include, but not be limited to, the following:

1. a process for documenting the date of actual receipt of non-electronic claims; and
2. a process for reviewing non-electronic claims for accuracy and acceptability.

B. The filing of the Prompt Payment Procedures Plan for Non-Electronic Pharmacy Claims document shall indicate compliance by a health insurance issuer or health maintenance organization with the filing requirements of R.S. 22:250.53. However, such documentation shall still be subject to review and disapproval at any time such documentation is deemed to be not in compliance with the substantive requirements of R.S. 22:250.53.

C. Health insurance issuers and health maintenance organizations are required to submit to the department their current claims address and to advise the department, in writing, of any change of the claims address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1664 (August 2007).

§11509. Claim Handling Procedures for Electronic Claims

A. Pursuant to R.S. 22:250.54, health insurance issuers and health maintenance organizations are required to submit to the department, for approval, a "Prompt Payment Procedures Plan for Electronic Pharmacy Claims" detailing statutory compliance for the receipt, acceptance, processing, payment of electronic claims and procedures in place to ensure compliance with R.S. 22:250.54 et seq. The "Prompt Payment Procedures Plan for Electronic Pharmacy Claims" shall include, but not be limited to, the following:

1. a process for electronically dating the time and date of actual receipt of electronic claims;
2. a process for reviewing electronic review of transmitted claims for accuracy and acceptability; and
3. a process for reporting all claims rejected during electronic transmission and the reason for the rejection.

B. Health insurance issuers and health maintenance organizations are required to submit to the department their current claims address and to advise the department, in writing, of any change of the claims address.

C. The filing of the "Prompt Payment Procedures Plan for Electronic Pharmacy Claims" document shall indicate compliance by a health insurance issuer and health maintenance organization with the filing requirements of R.S. 22:250.54. However, such documentation shall still be subject to review and disapproval at any time such documentation is deemed to be not in compliance with the substantive requirements of R.S. 22:250.54.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1664 (August 2007).

§11511. State of Emergency

A. Pursuant to any Executive Order issued by the governor transferring authority to the department on matters pertaining to insurance, and pursuant to the plenary authority vested in the commissioner under Title 22, the department shall be authorized to issue emergency regulations during a state of emergency that suspends and/or interrupts any of the provisions found in Title 22 or take any or all such action that the commissioner deems necessary in reference to provisions in Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1664 (August 2007).

§11513. Severability Clause

A. If any Section or provision of Regulation 90 or its application to any person or circumstance is held invalid, such invalidity or determination shall not affect other sections or provisions that can be given effect without the invalid sections or provisions or application, and for these purposes, the Sections or provisions of this regulation and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1664 (August 2007).

§11515. Effective Date

A. Regulation 90 shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and 22:250.61.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:1665 (August 2007).

A public hearing on the proposed regulation will be held on March 27, 2007, at 10 a.m. at 1702 North Third Street at the Poydras Building in Plaza Hearing Room. All interested persons may submit data, views, or arguments, orally or in writing to Claire Lemoine, 1702 North Third Street, Baton Rouge, LA 70802. All comments must be submitted no later than 4:30 p.m. on March 27, 2007.

James J. Donelon
Commissioner

0708#033

RULE

Department of Public Safety and Corrections Office of the State Fire Marshal

Fire Protection Licensing (LAC 55:V.Chapter 30)

In accordance with the provisions of R.S. 49:950 et seq. and R.S.40:1664.2, relative to the authority of the State Fire Marshal to promulgate and enforce rules, relative to the regulation of Life Safety and Property Protection, in particular, Portable Fire Extinguishers, Fire Hoses, Hydrostatic Testing of Department of Transportation fire protection cylinders, Fixed Fire Suppression Equipment and/or Systems and Fire Detection and Alarm Equipment and/or Systems, notice is hereby given that the Office of the State Fire Marshal amends the following Rule, replacing Chapter 30 in its entirety.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 30. Portable Fire Extinguishers, Fire Hoses, Hydrostatic Testing, Fixed Fire Suppression Equipment and/or Systems and Fire Detection and Alarm Equipment and/or Systems Rules

§3001. Purpose

A. The purpose of these rules is to regulate the activity of certifying, inspecting, installing, maintaining and servicing of portable fire extinguishers and fire hoses and/or the certifying, inspecting, installing, integrating, maintaining or servicing of fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems and/or hydrostatic testing Department of Transportation (DOT) fire protection cylinders in the interest of protecting and preserving lives and property pursuant to authority of R.S. 40:1664.1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR

17:273 (March 1991), amended LR 26:1324 (June 2000), LR 33:1665 (August 2007).

§3003. Applicability of Rules

A. These rules shall apply to all firms and persons engaged in the activity of certifying, inspecting, installing, maintaining and servicing of portable fire extinguishers and fire hoses and/or the certifying, inspecting, installing, integrating, maintaining or servicing of fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems and/or hydrostatic testing of DOT fire protection cylinders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1324 (June 2000), LR 33:1665 (August 2007).

§3005. Exceptions

A. These rules shall not apply to the following:

1. firms and/or persons engaging in the activity of certifying, inspecting, installing, integrating, or servicing fire detection and alarm equipment and/or systems in one or two family dwellings;

2. the servicing by industrial facilities and fire departments of their own portable fire extinguishers by their own employees specially trained to perform such.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1324 (June 2000), LR 33:1665 (August 2007).

§3007. Notices by the Fire Marshal

A. Any notice required to be given by the State Fire Marshal by any provision of R.S. 40:1664.1 et seq., or these rules must be given by personal or domiciliary service or mailed, postage prepaid, to the person's residence or firm address as it appears on the records in the Office of State Fire Marshal. It is the responsibility of the person or firm involved to assure that the Office of the State Fire Marshal has a correct address for the person or firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended by LR 26:1324 (June 2000), LR 33:1665 (August 2007).

§3009. Certificate, License Required

A. Each firm engaged in the activity of certifying, inspecting, installing, maintaining or servicing portable fire extinguishers or fire hoses or certifying, inspecting, installing, integrating, maintaining or servicing fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems or performing hydrostatic testing on DOT fire protection cylinders shall apply for a certificate of registration in the endorsements of certification desired in accordance with these rules prior to conducting any such activity in this state.

B. Each person or employee, including apprentices, engaged in the activity of inspecting, installing, servicing portable fire extinguishers or fire hoses or certifying, inspecting, installing, integrating, or servicing fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems or performing hydrostatic

testing on DOT fire protection cylinders shall apply for a license in the endorsements of licensure desired in accordance with these rules prior to conducting any such activity in this state.

C. Any firm and/or person described in A or B of this section, which has not applied for and received a current and valid certificate of registration or license, shall immediately cease such activities. The Office of State Fire Marshal may take all steps necessary to enforce an order to cease and desist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1325 (June 2000), LR 33:1665 (August 2007).

§3011. Definitions

A. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Activity—the inspecting, installing, maintaining and servicing of portable fire extinguishers and fire hoses and the certifying, inspecting, installing, integrating, maintaining or servicing of fixed fire suppression or fire detection and alarm equipment and/or systems and/or engaging in hydrostatic testing of DOT fire protection cylinders pursuant to R.S.40:1664.1 et seq.

Apprentice—a person who is licensed to work under the direct supervision and accompaniment of a technician who is licensed to the same firm and holding a valid license to perform the same acts.

Certificate of Registration—that document issued by the State Fire Marshal to a firm authorizing it to engage in such activities as defined in these rules.

Certify—to attest to the proper charging, or filling, or functionality, or hydrostatic testing, or inspection, or installation, or integration, or maintenance, or recharging, or refilling, or repair, or service, or testing of portable fire extinguishers, fire hoses, DOT fire protection cylinders, fixed fire suppression and/or fire detection and alarm equipment and/or systems in accordance with all applicable engineered specifications, manufacturer's specifications and per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards.

Contact Person—that individual designated by a firm to act as liaison with the Office of the State Fire Marshal.

Department of Transportation (DOT) Fire Protection Cylinder—all portable fire extinguisher or fixed fire suppression system cylinders manufactured and tested in compliance with specifications and requirements of the United States Department of Transportation.

Employee—one who works for a "firm", as defined by R.S.40:1664.3, in return for financial or other compensation. The term shall include the following:

a. for the purposes of the licensing requirements contained in R.S. 40:1664.4, employees shall not include secretaries, drivers, accounting personnel, or persons who sell portable fire extinguishers or single station smoke/fire detectors;

b. for the purposes of licensing requirements, the firm owner or owners shall be considered an "employee" if he or she is or will be physically certifying, inspecting,

installing, maintaining or servicing portable fire extinguishers or certifying, inspecting, installing, integrating, maintaining or servicing fixed fire suppression systems and/or equipment or in certifying, inspecting, installing, integrating, maintaining or servicing fire detection and alarm systems and/or equipment or performing hydrostatic testing on DOT fire protection cylinders or fire hoses.

Engineered Fixed Fire Suppression Systems—special systems individually designed or altered in accordance with nationally recognized fire protection system design standards and manufacturer's guidelines.

Fire Alarm Endorsement—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the certifying, inspecting, installing, integration, maintaining and servicing of fire detection and alarm systems and those activities specifically authorized by a Non-Required Systems endorsement.

Fire Alarm Non-Required Systems Endorsement—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, integration, maintaining and servicing of fire detection and alarm systems in structures or occupancies which are not required by NFPA 101 to be protected by an approved fire alarm and detection system.

Fire Alarm Owner Endorsement—that document issued by the State Fire Marshal that authorizes an owner of a fire alarm system or his employee to perform routine inspection, and minor service and repairs of fire detection and alarm systems within the owner's own facilities only. No installing, integration, or certifying of these systems is permitted. Minor service and repair is defined as repair/replacement of single initiating and/or annunciating devices with identical new devices. No service within the alarm control panel shall be permitted except that the exchanging of system batteries with identical new ones is permitted. Routine inspection is defined as visual inspections and monthly drill tests.

Fire Detection and Alarm Systems—those assemblies of wiring, electronic transmitting devices, detection devices, and related equipment for the detection of products of combustion or flammable gases, heat and smoke and for alerting occupants and fire department personnel of a fire emergency.

Fire Hose—a flexible conduit used to convey water.

Fire Protection Equipment/Systems—as governed by R.S. 40:1664.1 et seq., includes any equipment/system relating to portable fire extinguishers, fixed fire suppression systems (pre-engineered or engineered) and/or fire detection and alarm systems.

Firm—a sole proprietorship, partnership, corporation, limited Liability Company or any other entity.

Fixed Fire Suppression System Endorsement—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the certifying inspecting, installing, integration, maintaining and servicing of engineered or pre-engineered fixed fire suppression systems. Please note: Hydrostatic testing of fixed fire suppression cylinders required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

Hydrostatic Testing—pressure testing fire protection cylinders or fire hoses by approved hydrostatic methods and in accordance with NFPA codes and/or the U.S. Department of Transportation.

Hydrostatic Testing Endorsement—that document issued by the State Fire Marshal that authorizes a firm or person to engage in hydrostatic testing of fire protection cylinders manufactured in accordance with the specification and procedure of the United States Department of Transportation. A Hydrostatic Testing Endorsement is only valid if the firm or person also has a Portable Fire Extinguisher/Fire Hose Endorsement for testing DOT fire extinguisher cylinders and either a Fixed Fire Suppression System, Pre-Engineered Fixed Fire Suppression System or Kitchen Fixed Fire Suppression endorsement for testing DOT fixed fire suppression cylinders as well.

Inspection—a visual examination of a system or portion thereof to verify that it appears to be in operating condition and is free of physical damage. It does not include "quick checks" required every 30 days of portable fire extinguishers.

Installation—the initial placement of a portable fire extinguisher, fixed fire suppression equipment and/or systems, fire detection and alarm equipment and/or systems or an extension, or alteration after initial placement.

Integration—the act of utilizing accepted and approved fire protection systems and/or equipment and components in accordance with manufacturers' direction to develop a unified and functioning system meeting applicable NFPA codes and standards.

Kitchen Fixed Fire Suppression System—those specific fire suppressions systems designed to protect appliances within commercial cooking operations.

Kitchen Fixed Fire Suppression System Endorsement—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, integration, maintaining or servicing pre-engineered fixed fire suppression systems containing wet or dry chemical agents within a kitchen ventilation system.

Please Note: Hydrostatic testing of fixed fire suppression cylinders required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

License—that document issued by the State Fire Marshal to an employee of a certified firm authorizing the employee to engage in the activities as defined by these rules.

Maintenance—work, including, but not limited to repair, replacement, and service, performed to ensure that equipment operates properly. For portable fire extinguishers, it includes a thorough examination for physical damage or condition to prevent its operation and any necessary repair or replacement.

Nationally Recognized Testing Laboratory—a nationally recognized testing company concerned with product and service evaluation, which, after conducting successful examinations, inspections, tests and reexaminations, reflects approval by various labeling, listing and classification actions.

NFPA—the National Fire Protection Association, Inc., a nationally recognized standards-making organization.

Non-Conforming—a system or component of a system which does not comply with applicable NFPA codes or standards.

Non-Required—a system or component of a system which is not required by the applicable occupancy chapter of NFPA 101 (Life Safety Code).

Office—Office of State Fire Marshal.

Operating Location—a physical office which houses employees and business documents or records and from which the acts authorized by the certificate of registration are performed.

Person—a natural individual, including any owner, manager, officer, or employee of any firm.

Pocket License—that document issued by the State Fire Marshal to an employee of a certified firm, in pocket size and bearing a photographic image of the licensee, authorizing the employee to engage in the activities as defined by these rules.

Pre-Engineered Fixed Fire Suppression Systems—packaged systems which consist of system components designed to be installed according to pretested limitations as approved or listed by a testing laboratory. Pre-engineered systems may incorporate special nozzles, flow rates, methods of application, nozzle placement and pressurization levels, which may differ from those detailed elsewhere in NFPA. Pre-engineered systems shall be installed to protect hazards within the limitations that have been established by the testing laboratories where listed.

Pre-Engineered Fixed Fire Suppression Endorsement—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, integration, maintaining or servicing pre-engineered fixed fire suppression systems and those activities specifically authorized by a Kitchen Suppression Endorsement.

Please Note: Hydrostatic testing of fixed fire suppression cylinders required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

Portable Fire Extinguisher—a portable device containing a suppression agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire and shall include semi-portable fire extinguishers.

Portable Fire Extinguisher/Fire Hose Endorsement—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, maintaining or servicing portable fire extinguishers and fire hoses and hydrostatic testing of portable fire extinguisher cylinders not required by the U.S. Department of Transportation (U.S. DOT).

Please Note: Hydrostatic testing required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

Qualifying Person—the employee of a firm who currently meets the certification, examination and/or training requirements set for each endorsement by the Life Safety and Property Protection Advisory Board.

Recharge—the replacement of the suppression agent, the expellant or both.

Required—a system or component of a system which is required by the applicable occupancy chapter of NFPA 101 (Life Safety Code).

Semi-Portable—any portable fire extinguisher mounted on skids or wheels.

Service—the act of repair or replacement of fire protection equipment/systems to ensure the proper functioning of the equipment/system.

Shop—a facility of a certified firm where certifying, inspecting, integrating, maintaining, pre-assembling, servicing, repairing or hydrostatic testing is performed and where firm records, parts and equipment are maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1325 (June 2000), LR 33:1666 (August 2007).

§3013. Certificates of Registration

A. Every firm must obtain from the State Fire Marshal a certification of registration with the appropriate endorsements as provided for by R.S.40:1664.1 et seq., before engaging in the activity of certifying, inspecting, installing, maintaining or servicing portable fire extinguishers or fire hoses or certifying, inspecting, installing, integrating, maintaining or servicing fixed fire suppression systems or fire detection and alarm systems and/or engaging in hydrostatic testing of DOT fire protection cylinders.

1. Each firm, as defined by R.S.40:1664.3 et seq., shall have at least one licensed technician per endorsement of certification to perform the act or acts authorized by its certificate.

2. Firms as defined by R.S.40:1664.3 et seq., and their owners shall be responsible for the acts of their agents and employees for the purpose of these rules including the initiation of administrative action by the state fire marshal.

B. The following shall apply to certificates of registration.

1. Posting. Each certificate shall be posted conspicuously at each firm and/or branch office premises. All firms without a physical location in this state shall be required to purchase a duplicate certificate to post in each vehicle which will come into this state to do work.

2. Changes of Ownership. The change of a firm's majority ownership invalidates the current certificate. To assure continuance of the firm, an application for a new certificate shall be submitted to the State Fire Marshal within 10 days after such change in ownership.

3. Change of Corporate Officers. Any change of corporate officers must be reported in writing to the State Fire Marshal within 10 days of the change, and does not require a revised certificate.

4. Duplicates. A duplicate certificate must be obtained from the State Fire Marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction within 10 days, accompanied by the required fee specified in these rules.

5. Revisions/Changes. The change of a firm's name, location, or mailing address or operating status requires a revision of the certificate of registration. Certificates of registration requiring changes must be surrendered to the State Fire Marshal within 10 days after the change requiring the revision. The certificate of registration holder must submit written notification of the change with the surrendered certificate of registration, accompanied by the required fee specified by R.S. 40:1664.1 et seq.

6. Non-Transferability. A certificate of registration is not transferable from one firm to another.

7. Validity. A certificate of registration is valid for one year from date of issue, and must be renewed annually unless the State Fire Marshal adopts a system under which certificates expire on various dates during the year. Should a staggered renewal system be adopted, the renewal fees shall be prorated on a monthly basis so that each registrant pays

only that portion of the fee that is allocable to the number of months during which the certificate is valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1327 (June 2000), LR 33:1668 (August 2007).

§3015. Licensure

A. Required. Each person who certifies, inspects, installs, maintains and services portable fire extinguishers, and/or certifies, inspects, installs, integrates, maintains or services fixed fire suppression systems and/or fire detection and alarm systems and/or engages in hydrostatic testing of DOT fire protection cylinders shall have a current and valid license issued by the State Fire Marshal.

B. Types of Endorsement. Each license shall be identified by endorsement, which indicates the authorized act or acts which may be performed by the licensee as follows.

1. Portable Fire Extinguisher/Fire Hose Technician Endorsement authorizes the person to certify, inspect, install, maintain and service portable fire extinguishers and fire hoses. No certifying, inspecting, installing, integration, maintaining or servicing of the fire hose station or standpipe system is permitted unless properly licensed for fire sprinkler contracting.

2. Pre-Engineered Fixed Fire Suppression Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service pre-engineered fixed fire suppression systems.

3. Kitchen Fixed Fire Suppression Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service pre-engineered fixed fire suppression systems containing wet or dry chemical agents within a kitchen ventilation system.

4. Fixed Fire Suppression System Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service engineered or pre-engineered fixed fire suppression systems.

5. Fire Alarm Technician Endorsement authorizes a person to certify, inspect, install, integrate, maintain and service fire detection and alarm systems.

6. Fire Alarm Non-Required Systems Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service fire detection and alarm systems in structures or occupancies which are not required by NFPA 101 to be protected by an approved fire detection and alarm system.

7. Fire Alarm Owner Technician Endorsement authorizes the person to perform routine inspection and minor service and repair of fire detection and alarm systems/equipment within the owner's own facility. No certifying, installing or integrating of these systems/equipment is permitted. Minor service and repair is defined as repair/replacement of single initiating and/or annunciating devices with identical new devices or the replacement of the system's batteries. Routine inspection is defined as visual inspections and monthly drill tests.

8. DOT Hydrostatic Testing Technician Endorsement authorizes the person to pressure test fire protection cylinders by approved hydrostatic methods and in

accordance with NFPA codes and the U.S. Department of Transportation.

9. Apprentice Endorsement authorizes the person to inspect, install, maintain and service portable fire extinguishers, fire hoses, fixed fire suppression systems and/or equipment of fire detection and alarm systems and/or equipment only while under the direct supervision of and accompanied by a licensed technician who holds a current and valid license for the work to be performed. An apprentice cannot certify fire protection systems or equipment. An apprentice endorsement can be renewed annually as long as the individual or firm desires. The supervising technician and trainee must work for the same firm which must be certified for the work to be performed.

C. Posting. It is not necessary to post an employee license on a wall. A master list of all employees' names and license numbers must be kept at each office location and must be available for review upon request by the State Fire Marshal or his designated representative.

D. Pocket License. The pocket license is for immediate identification purposes only so long as such license remains valid and while the holder is employed by the firm reflected on the license and shall be on his/her person at all times when conducting fire protection work in the field. The pocket license need not be visibly displayed when working in areas where the license may be damaged or lost. The license must still be available for inspection upon request.

E. Duplicate License. A duplicate license must be obtained from the State Fire Marshal to replace a lost or destroyed license. The license holder and his employer must submit written notification within 10 days of the loss or destruction of a license, accompanied by the required fee as specified in these rules.

F. Revised Licenses. The change of a licensee's employer, home address or mailing address or employment status requires a revised license. Licenses requiring revision must be surrendered to the State Fire Marshal within 10 days after the change requiring the revision. The license holder and his employer must submit written notification of the necessary change with the surrendered license, accompanied by the required fee as specified in these rules.

G. Non-Transferable. A license is not transferable from one person to another or from one firm to another.

H. License Reciprocity. The State Fire Marshal may waive license requirements for an applicant with a valid license from another state if that state has license requirements substantially equivalent to Louisiana and which recognizes licenses issued by this office.

I. Validity. A license is valid for one year from date of issue, and must be renewed annually unless the State Fire Marshal adopts a system under which licenses expire on various dates during the year. Should a staggered renewal system be adopted, the renewal fees shall be prorated on a monthly basis so that each licensee pays only that portion of the fee that is allocable to the number of months during which the license is valid.

J. Age Limitations. For the purpose of licensing, no one under the age of 18 shall be eligible for a technician's license and no person under the age of 16 shall be eligible for an apprentice license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1328 (June 2000), LR 33:1668 (August 2007).

§3017. Alteration of Certificates or Licenses

A. Any alteration of a certificate of registration or license renders it invalid and such alteration shall be the basis for administrative action in accordance with penalties set forth in R.S.40:1664.1 et seq., and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1329 (June 2000), LR 33:1669 (August 2007).

§3019 Application for Certificates of Registration

A. Applications for a certificate of registration for fire protection firms shall be in writing on the forms provided by the State Fire Marshal and accompanied by the required fee as specified in these rules.

B. The application for certificates of registration shall:

1. be executed by the sole proprietor, by each partner of a partnership, or by the authorized officer of a corporation or association;

2. identify the type of endorsement applied for;

3. identify the principal location of the firm;

4. identify the firm's Louisiana sales tax number and federal tax number;

5. identify any and all names by which the firm may conduct activity regulated by R.S. 40:1664.1 et seq., and these rules;

6. identify the contact person as defined by these rules;

7. identify the qualifying person for each endorsement applied for;

8. include a separate employee application for their qualifying person along with the qualifying person's credentials as required by the Life Safety and Property Protection Advisory Board and an originally signed and notarized employment affidavit;

9. be accompanied by:

a. at least one application with fee from an employee seeking to obtain a technician's license in each endorsement;

b. a current certificate of insurance issued to the Office of State Fire Marshal showing a minimum of \$500,000 coverage;

c. a copy of the local firm or occupational license for the firm;

10. (if the firm desires a Hydrostatic Testing Endorsement) be accompanied by the following:

a. a copy of the DOT letter registering applicant's facility which awards a registration number to the facility; and

b. a copy of the firm's identifying mark (symbol);

11. (for out of state firms) include a list of all vehicles which shall come into this state to conduct activity regulated by R.S. 40:1664 et seq., and these rules. The list shall include the vehicle's make, model, year and license number.

C. The application shall also include written authorization by the applicant permitting the State Fire Marshal or his representative to enter, examine, and inspect any premise, building, room, vehicle, or establishment used by the applicant while engaged in activity to determine compliance with the provisions of R.S.40:1664.1 et seq., and these rules.

D. When the applicant has completed the requirements contained above, a pre-certification inspection may be conducted at the facilities or of the vehicles of the applicant. Such inspection is to determine that such equipment necessary to perform activities in accordance with the applicable NFPA codes and/or standards, UL or manufacturer's specifications for which the applicant is applying to be certified is on hand. The office may inspect vehicles, equipment, buildings, devices, premises or any area to be used in performing the activities allowed by the certificate of registration. After issuance of a certificate of registration, such facilities may be inspected annually thereafter or as frequently as deemed necessary to ensure that the equipment requirement continues to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1329 (June 2000), LR 33:1669 (August 2007).

§3021. Qualifying Persons

A. Each certified firm or each firm seeking certification shall employ at least one qualifying person for each endorsement it is making application for. No fire protection system or equipment shall be certified, hydrostatically tested, inspected, installed, integrated, maintained, serviced, or submitted to this office for review if the firm does not employ a qualifying person as provided herein.

B. The qualifying person shall be a paid employee and shall receive a W-2 or K-1 tax form from the firm. The qualifier shall only qualify one firm for which he is employed. An individual may not qualify multiple firms at the same time. A contract employee cannot be used to fulfill this requirement except as provided by Subsection G below. A qualifier must physically reside within 150 miles of the office for which he or she qualifies.

C. The qualifying person shall be primarily and actively engaged in direct supervision of the certification, hydrostatic testing, integrating, inspection, installation, maintaining and servicing of those fire protection systems or equipment the firm holds endorsements for. If a firm holds multiple endorsements, then multiple qualifiers may be utilized to meet this requirement. Upon request by the fire marshal or his representative, a qualifier shall provide documentation attesting to his or her direct supervision of any certification, hydrostatic testing, integration, inspection, installation, maintenance or service performed by the firm he or she qualifies.

D. A qualifier must meet the minimum examination, certification, or training requirements as established by the Life Safety and Property Protection Advisory Board. The state fire marshal shall send notice to licensed firms of all changes to qualifier credentials made by the Life Safety and Property Protection Advisory Board.

E. The following requirements are required for the endorsements listed.

1. Fixed Fire Suppression Endorsement—a current NICET Certificate, minimum Level III in Special Hazards Suppression Systems, or a professional engineer currently registered with the Louisiana Board of Professional Engineers with a Mechanical Engineer endorsement.

2. Fire Alarm Endorsement—a current NICET Certificate, minimum Level III in Fire Alarm Systems, or a professional engineer currently registered with the Louisiana Board of Professional Engineers with an Electrical Engineer endorsement.

F. A Louisiana Board of Professional Engineers registered Fire Protection Engineer may substitute for any of the above if documented to be in the appropriate discipline of endorsement.

G. At any time that a firm finds itself without a qualifying person, such firm shall only be able to continue certifying, hydrostatic testing, inspecting, maintaining and/or servicing existing contractual obligations for that endorsement but shall not engage in any new work until a qualifying person has been employed as provided herein.

H. This office shall be notified in writing within 10 working days anytime a qualifying person's employment is terminated for any reason.

I. A firm which loses its qualifying person and has timely notified the Office of the State Fire Marshal shall have 60 days to hire another qualifying person. If after the loss of such an employee, a replacement cannot be found within the 60 days, the firm may make a request to the Office of the State Fire Marshal to temporarily hire a qualifying person on a contractual basis. Good cause must be shown why another employee cannot be permanently hired. Approval by the Office of the State Fire Marshal for the hiring of a qualifying person on a contractual basis shall not exceed six months. Not later than 30 days prior to the expiration of the six month period, the firm can request an additional six-month period to employ a qualifying person on a contractual basis. The Office of the State Fire Marshal may grant one additional six-month period during which a firm may employ a qualifying person on a contractual basis.

J. Failure to notify this office in writing within 10 working days of the loss of a qualifying person will cause forfeiture of any extension of time to hire another qualifying person.

K. A qualifying person must obtain an individual employee license as required by these rules. Licensure of the qualifier shall include a signed and notarized affidavit indicating the employment relationship and duties of the qualifier. If a firm desires to use multiple qualifiers for submitting plans and supervising installations or service, then it must register and license the additional qualifiers with the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 33:1670 (August 2007).

§3023. Application for Licenses

A. Applications for a license from an employee of a certified firm shall be on forms provided by the State Fire Marshal and accompanied by the required fee as specified in these rules.

B. Applications for technicians' licenses shall be accompanied by a written statement from the employer certifying the applicant's competency to certify, hydrostatic test, inspect, install, integrate, maintain or service those systems and/or equipment for which the applicant desires to become licensed.

C. Applications for technicians' licenses will not be accepted unless accompanied by documentation showing that the applicant has met all competency requirements as determined by the Life Safety and Property Protection Advisory Board.

D. No competency examination is required for an apprentice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1330 (June 2000), LR 33:1671 (August 2007).

§3025. Fees—General Information

A. Every fee required in accordance with the provisions of R.S. 40:1664.1 et seq., and these rules, shall be paid by firm check or certified funds made payable to the "Office of State Fire Marshal." Cash or personal checks cannot be accepted.

B. Fees shall be paid at, or mailed to, the Office of the State Fire Marshal at 8181 Independence Blvd., Baton Rouge, LA 70806.

C. Late fees are required on all certificates of registration or license holders who fail to submit renewal applications in a timely fashioned as outlined in R.S. 40:1664.1 et seq.

D. A renewal application accompanied by the required renewal fee and deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a legible postmark date which is on or before the expiration date of the certificate or license being renewed.

E. Certificates or licenses which have been expired for more than 60 days will be suspended and applicants must apply and pay for a new certificate of registration or license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1330 (June 1330), LR 33:1671 (August 2007).

§3027. Fees—Specific Information

A. Certificate of Registration Fees

Certificate	Initial	Renewal
Technical Endorsement		
Fixed Fire Suppression	\$350	\$100
Specialty Endorsement		
Pre-Engineered	\$350	\$100
Kitchen Suppression	\$350	\$ 50
Technical Endorsement		
Fire Alarm	\$350	\$100
Specialty Endorsement		
Fire Alarm (Non-required)	\$350	\$ 50
Fire Alarm Owner	\$350	\$ 50

Certificate	Initial	Renewal
Technical Endorsement		
Portable Fire Extinguishers/Hoses	\$350	\$150
Technical Endorsement		
DOT Hydrostatic testing	\$350	\$ 50

B. License Fees

Certificate	Initial	Renewal
Technical Endorsement		
Fixed Fire Suppression	\$50	\$50
Specialty Endorsement		
Pre-Engineered	\$50	\$50
Kitchen Suppression	\$50	\$50
Technical Endorsement		
Fire Alarm	\$50	\$50
Specialty Endorsement		
Fire Alarm(Non-required)	\$50	\$50
Fire Alarm Owner	\$50	\$50
Technical Endorsement		
Portable Fire Extinguishers/Hoses	\$50	\$50
Technical Endorsement		
DOT Hydrostatic testing	\$25	\$25
Technical Endorsement		
Apprentice	\$50	\$50

C. Late Renewal Fee. A penalty shall be assessed in accordance with R.S. 40:1664.9 for the late renewal of a certificate of registration or license.

D. Change in ownership—\$350.

E. Changes or alterations—\$20.

F. Duplicate Certificates of Registration—\$20.

G. Initial Competency Examination Fee—\$25 (non-refundable)(per exam).

H. Re-Examination Fee—\$25 (non-refundable)(per re-exam).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1331 (June 2000), LR 33:1671 (August 2007).

§3029. Examinations

A. Applicants for licenses are required to take an examination and obtain at least a grade of 70 percent in each appropriate section of the examination. Examinations may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability.

B. The technician's license examination will include the following:

1. a section on these rules and R.S. 40:1664.1 et seq.;

2. a section on the certifying, hydrostatic testing, inspecting, installing, integrating, maintaining and servicing of those types of systems or equipment for which the applicant desires to be licensed.

C. The standards used in examinations will be those applicable codes and standards as noted or as adopted by LAC-55-V:103 as follows.

1. Portable Fire Extinguisher/Fire Hose—NFPA 10, 101, 1961, and 1962.

2. Fixed Fire Suppression—NFPA 11, 11A (1999 Edition), 12, 12A, 17, 17A, 96, 101 and 2001.

3. Pre-Engineered Fixed Fire Suppression—NFPA 11, 11A (1999 Edition), 12, 12A, 17, 17A, 96, 101 and 2001.

4 Kitchen Fixed Fire Suppression—NFPA 17, 17A, 96 and 101.

5. Fire Alarm—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

6. Fire Alarm (non-required)—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

7. Fire Alarm Owner—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

8. DOT Hydrostatic Testing—CFR 49, NFPA 1961 and 1962.

D. Applicants who fail any section may file a reexamination application accompanied by the required fee and retake the examination.

E. A person whose license has been expired for two years or longer must take and pass another examination or approved training course prior to the issuance of a new license. No examination is required for a license holder whose license is renewed within two years of expiration.

F. A person who desires to take a competency test must first pre-register for that test with the State Fire Marshal's Office or the examination administrator designated by the State Fire Marshal, on a pre-registration form provided by this office or the examination administrator. The pre-registration form and the required fee must be received by the office five working days prior to the examination date.

G. Results. Examination scores shall be mailed to the applicant's address as listed on the pre-registration form within 30 days after completing the test.

H. In lieu of an examination, the Office of the State Fire Marshal may accept an approved training course in which an examination is also given. The Office of the State Fire Marshal shall determine whether the training course is equivalent to the examination requirements and may audit the course, at no cost to the office, prior to final determination and periodically to ensure continued equivalency. Requests for acceptance of a training course to be equivalent must be made in writing and include the following:

1. course outline and syllabus;
2. length of course and specific time covered per topic;
3. example of test questions;
4. a copy of the certificate granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1331 (June 2000), LR 33:1671 (August 2007).

§3031. Portable Fire Extinguishers/Fire Hoses

A. General Provisions

1. Portable fire extinguishers and fire hoses shall be certified, hydrostatically tested, inspected, installed, maintained and serviced in compliance with NFPA 10 or 1961 or 1962, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 or noted in these rules.

2. A service tag shall be securely attached by the licensee to the portable upon completion of any work.

3. When an extinguisher or fire hose is found to be in a condition which would not allow hydrostatic testing as described in NFPA 10 or 1961 or 1962, as adopted by the

Office of the State Fire Marshal in LAC-55:V:103 noted in these rules, then the extinguisher or hose shall be red tagged or removed from service and destroyed in accordance with the applicable code or standard and these rules.

4. When an extinguisher is removed from the owner's premise for service, a replacement extinguisher shall be left of equal or greater rating on a one for one basis by the portable fire extinguisher/fire hose firm. Replacements need not be left where a building owner has fire extinguishers in excess of the required amount as required by NFPA 10 and NFPA 101 as adopted by the Office of the State Fire Marshal in LAC-55:V:103.

5. Anytime an extinguisher is opened for any reason then the appropriate maintenance procedures in NFPA 10 as adopted by the Office of the State Fire Marshal in LAC 55:V:103, shall be performed. If these procedures fulfill the requirements of a six-year maintenance then a record tag shall be affixed to the exterior of the extinguisher shell. Future six-year maintenance procedures shall begin from that date.

B. Record Tag. Each six year maintenance shall be recorded on a record tag consisting of a decal which shall be affixed (by a heatless process) on the exterior of the extinguisher shell. The decal shall either be metallic or of an equally durable material which does not corrode and which remains affixed to the extinguisher for the required period. The decal shall also not fade, wash away, or otherwise become illegible. This paragraph supersedes labeling requirements set forth in NFPA 10 as adopted by the Office of the State Fire Marshal in LAC 55:V:103. Previous six-year maintenance record tags shall be removed when a new one is affixed. The record tag shall contain the following information:

1. year and month that the six-year maintenance was performed;
2. the name of the firm and its certificate number (must be pre-printed);
3. the initials of the person performing the maintenance and his/her license number.

C. External Verification Collar

1. In addition to any other tag required by these rules, an external verification collar shall be provided each time an extinguisher is opened up for any type of maintenance or for any purpose.

2. The standard external verification collar shall be on durable material. Self adhesive collars shall be permitted. Any color may be used with the exception of yellow or red.

D. External verification collars shall bear the following:

1. the certificate number of servicing firm (preprinted or printed in permanent ink);
2. name and license number of the person who performed the service (preprinted or printed in permanent ink);
3. month and year that the service was performed (to be punched).

E. A new external verification collar shall be provided for an extinguisher each time internal maintenance or recharging is performed or the extinguisher is opened for any other reason. A new external verification collar is not needed when a CO₂ extinguisher is recharged without opening the cylinder for inspection or on side cartridge type extinguishers.

F. External verification collars shall be affixed in the following manner:

1. any collar previously attached shall be removed prior to affixing a new collar;
2. the collar shall be placed around the exterior of the cylinder at or below the valve assembly.

G. The collar shall contain a single circular piece of uninterrupted material forming a hole of a size that will not allow the collar assembly to move over the neck of the cylinder unless the valve is completely removed. In no case shall the diameter of the opening exceed 1/4" the diameter of the cylinder's neck, measured directly below the valve assembly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 33:1672 (August 2007).

§3033. Fixed Fire Suppression and Fire Detection and Alarm Systems and Equipment

A. All new (complete or renovated) required fixed fire suppression systems including kitchen, pre-engineered and engineered systems, and fire detection and alarm systems shall be certified, hydrostatically tested, inspected, installed, integrated, maintained and serviced in compliance with the manufacturer's installation manuals, specifications, reviewed plans and the applicable codes and standards adopted in LAC 55:V:103 or noted in these rules.

B. All existing required fixed fire suppression systems including kitchen, pre-engineered and engineered systems, and fire detection and alarm systems shall be certified, hydrostatically tested, inspected, integrated, maintained and serviced in an operational condition in accordance with the manufacturer's installation manuals, specifications, and per the inspection, testing and maintenance chapters of the applicable codes and standards adopted in L.A.C.55:V.103 or noted in these rules.

C. All non-required and non-conforming fixed fire suppression systems including kitchen, pre-engineered and engineered systems, and fire detection and alarm systems shall be certified, inspected, installed, integrated, maintained and serviced in compliance with the manufacturer's installation manuals, specifications, and deviations from the applicable codes and standards adopted in LAC 55:V.103 and these rules as authorized by the Office of the State Fire Marshal.

D. Non-required and/or non-conforming systems/equipment which only comprise of smoke or heat detectors connected to a burglar alarm system need not be inspected and certified annually by a certified fire alarm system firm. The owner of these systems must ensure these systems are functional and maintained in compliance with the manufacturer's specifications and NFPA 101 as adopted in LAC 55:V:103 and these rules.

E. All systems, except as noted in Subsection D above, shall be certified, hydrostatically tested, inspected, installed, integrated, maintained and serviced by certified firms having licensed personnel working within their certification and licensing discipline. In cases where disciplines cross over, the following reasoning will prevail.

1. Automatic detection and control systems will be certified, inspected, installed, integrated, maintained and serviced by firms certified to install fire detection and alarm

systems and/or equipment unless it is just the section device associated with the actuation of a kitchen, pre-engineered or engineered system, in which case the fire detection and alarm firm is not needed. However, any connection of that kitchen, pre-engineered or engineered system to any alarm initiated system, to include but not limited to annunciator panels, HVAC shutdown and any other auxiliary feature controlled by the fire alarm system, then a firm with a Fire Alarm endorsement must certify, inspect, install, integrate, maintain or service the device.

2. Water supply and distribution piping systems as provided for in NFPA 25, as adopted in LAC-55:V.103 and these rules will be certified, inspected, installed, integrated, maintained and serviced by a firm with a Fire Sprinkler endorsement as regulated by R.S. 40:1664.1 et seq. Foam systems providing foam solution to fire monitors, portable nozzles, or fire trucks are excluded from this Rule.

3. Alarm devices such as flow switches, pressure switches, low air pressure switches that are an integral part of a fire protection sprinkler piping system must be installed by a firm with a Fire Sprinkler endorsement as regulated by R.S. 40:1664.1 et seq., and connected to the fire alarm system by a firm with a Fire Alarm endorsement.

F. All non-required or non-conforming systems require written permission and possible review from the Office of the State Fire Marshal Plan Review Section prior to installation. Non-conforming systems shall be maintained in a functioning operational state as long as the system is within the facility. Non-required systems shall be maintained in accordance with the inspection, testing, and maintenance chapters of the applicable NFPA codes, standards and manufacturer's specifications governing that particular system as long as the system is within the facility.

G. Interconnected smoke or heat detector systems as required by the NFPA 101, as adopted by the Office of the State Fire Marshal in LAC-55:V.103 and these rules, or as authorized by this office must be inspected, installed, integrated, maintained and serviced by either a certified fire detection and alarm firm or an electrical contractor as provided by R.S. 40:1664.1 et seq. These systems must be submitted to this office's Plan Review Section for review prior to installation.

H. Each heat detector (fusible link) employed within a fixed fire suppression system shall have the manufacturer date marked on the detector. The date shall reflect the current or previous calendar year when installed.

I. External Verification Collar

1. In addition to any other tag required by these rules, an external verification collar shall be provided each time a fixed fire suppression agent cylinder is opened for any purpose.

2. The external verification collar shall be on durable material. Self adhesive collars shall be permitted. Any color may be used with the exception of yellow or red.

3. External verification collars shall bear the following:

a. the certificate number of servicing firm, preprinted or printed in permanent ink;

b. name and license number of the person who performed the service, preprinted or printed in permanent ink;

c. month and year that the service was performed. This information must be punched.

J. A new external verification collar is not needed in the following circumstances:

1. when a CO₂ fixed fire suppression cylinder is recharged without opening the cylinder for inspection;
2. cartridge operated type of systems.

K. External verification collars shall be affixed in the following manner:

1. any collar previously attached shall be removed prior to affixing a new collar;
2. the collar shall be placed around the exterior of the cylinder at or below the valve assembly.

L. The collar shall contain a single circular piece of uninterrupted material forming a hole of a size that will not allow the collar assembly to move over the neck of the cylinder unless the valve is completely removed. In no case shall the diameter of the opening exceed 1/4" the diameter of the cylinder's neck, measured directly below the valve assembly.

M. The office may exempt additional cylinders from this requirement if good cause is shown that the requirement is impractical or overly burdensome.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1332 (June 2000), LR 33:1673 (August 2007).

§3035. Hydrostatic Tests

A. All hydrostatic testing shall be conducted in compliance with U.S. Department of Transportation hydrostatic testing requirements, or, where applicable, in compliance with the appropriate NFPA code or standard as adopted by the Office of the State Fire Marshal in LAC 55:V.103 and these rules. The owner shall be informed of a needed test or replacement.

B. Recording of Tests

1. High Pressure Cylinders. High pressure cylinders and cartridges shall be stamped in accordance with the applicable NFPA and D.O.T. standards as adopted by the Office of the State Fire Marshal in LAC 55:V.103 and these rules.

2. Low Pressure Cylinders. Each hydrostatic test shall be recorded on a record tag consisting of a decal which shall be affixed by a heatless process on the exterior of the extinguisher cylinder. The decal shall either be metallic or of an equally durable material which does not corrode and which remains affixed to the extinguisher for the required period. The decal shall also not fade, wash away, or otherwise become illegible.

3. The record tag shall contain the following information, which, exception for Subparagraphs c and d hereof, must be hand punched:

- a. year and month that the hydrostatic test was performed;
- b. test pressure used;
- c. name of the firm and its certificate number (must be pre-printed);
- d. initials of the person performing the maintenance and his license number.

4. Previous hydrostatic test record tags shall be removed when a new one is affixed.

5. The licensed firm shall keep a permanent record of each hydrostatic test performed for a minimum of five years. The record shall include as a minimum the following:

- a. date of test;
- b. cylinder serial number;
- c. model number;
- d. cylinder size;
- e. test pressure;
- f. visual inspection result;
- g. cylinder disposition;
- h. initials of the person performing the test;
- i. owner of cylinder.

6. Fire Hoses. Records of fire hose tests shall comply with the latest edition of NFPA 1962 as enumerated in LAC 55:V.103 and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1333 (June 2000), LR 33:1674 (August 2007).

§3037. Installation Tags

A. Upon installation of any new fire protection system, the system shall have a tag permanently affixed to the panel for fire detection and alarm and fixed fire suppression systems. On kitchen fixed fire suppression systems, the tag shall be permanently affixed to the side of the suppression agent cylinder. This requirement does not apply to portable fire extinguishers. The installation tag shall be a minimum of 2 3/4 inches by 2 3/4 inches. Maximum size cannot exceed 5 inches by 5 inches. The tag shall be white in color and have a self adhesive backing. The following information and wording shall be required to be preprinted on the front side of the tag:

1. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters, in bold type);
2. installation tag;
3. installation date;
4. firm's name;
5. firm's certificate number;
6. technician's name;
7. technician's license number;
8. technician's signature;
9. NFPA Code edition system was installed under;
10. plan review or exemption number;
11. serial or model number of panel and/or cylinder, if applicable.

B. All tags shall have a signature line for the technician to sign the tag upon completion of the work. No preprinted signatures are permitted. Technicians must sign the tag; initials are not permitted. Other information to be completed on the tag may be either handwritten or preprinted. Apprentices are not permitted to sign tags.

C. If after initial installation a cylinder or panel is replaced for any reason, a new installation tag shall be completed and attached as above, noting the appropriate changes in information.

D. If an installation tag is replaced, hand-write "REPLACEMENT" after the installation date. If the original

installation date is not known, the date of replacement can be used.

E. Copies of certificates of compliance required to be completed by this office shall be attached to the system in a plastic pocket pouch/sleeve or given to the owner for filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1334 (June 2000), LR 33:1674 (August 2007).

§3039. Service Tags, Yellow Tags, Red Tags, and Stenciling

A. All portable fire extinguishers, fire hoses, fixed fire suppression equipment and/or systems, and fire detection and alarm equipment and/or systems shall be tagged or stenciled in the following manner.

B. Service Tags

1. A service tag shall be completed and attached to a portable fire extinguisher, fire hoses, a fixed fire suppression system, and a fire detection and alarm system, after it has been certified, hydrostatically tested, inspected, installed, maintained or serviced indicating all work that has been done. Fire hoses shall be stenciled in ink after being hydrostatically tested.

2. Service tags shall be green in color for fixed fire suppression systems, and fire detection and alarm systems. Service tags may be of any color but yellow or red for portable fire extinguishers and fire hoses. Fire hoses shall be stenciled in a contrasting color to that of the hose.

3. The service tag shall be attached at the following locations.

a. For portable fire extinguishers, the tag shall be attached at the valve/neck assembly or gauge. It shall not be attached on the hose.

b. For fixed fire suppression systems, the tag shall be attached at each cylinder and each control panel.

c. For kitchen fixed fire suppression systems, the tag shall be attached at each cylinder and each manual pull station.

d. For fire detection and alarm systems, the tag shall be attached at each control panel, (Booster panels that are part of a fire detection and alarm system need not be tagged.).

e. For fire hoses, the tag shall be located at the female coupling.

f. For fire hoses, the stencil shall be located at both couplings.

4. The service tag shall be attached in such a way as to not hamper the actuation and operation of the equipment or system.

5. A service tag shall be attached on all systems or equipment found to be in proper working condition and which are found to be in an operational condition per the inspection, testing and maintenance chapters of the applicable NFPA codes and standards. This tag shall be used for new installations and shall be in addition to the installation tag provided for in these rules. This tag shall also be used for all service and maintenance where the system is found to meet the above conditions.

6. Service tags must contain all of the information listed below:

a. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters in bold face type);

b. servicing firm's name, address and telephone number;

c. servicing firm's State Fire Marshal certificate number;

d. servicing technician's name and State Fire Marshal license number to be printed on tag either at the time of service or preprinted;

e. servicing technician's signature to be signed at time of service (no preprinted signatures nor initials are permitted, except that tags attached to portable fire extinguishers may use preprinted signatures; apprentices are not permitted to sign tags);

f. day, month and year in which service was performed (must be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of work performed, only installation, certification, and service shall be noted on tag for type of work performed (must be punched through the service tag):

i. "Installation" shall be punched on the tag when the fire protection system or equipment is initially placed into service or after an addition or extension to the system has been made. Punching "Installation" indicates the initial certification of the system or equipment has been completed;

ii. "Certification" shall be punched on the tag when the fire protection system or equipment has its six month or annual inspection or maintenance. Punching "Certification" indicates that any required service performed to the system or equipment at the time has been completed;

iii. "Service" shall be punched on the tag when the fire protection system or equipment is repaired or replaced to ensure proper operation in between required certification periods;

iv. specifics as to the type of work performed shall be noted on rear of tag, (i.e., new installation, annual certification, annual maintenance, recharged cylinder, changed smoke detector, repaired pull station, etc);

h. serial number of portable fire extinguisher, fixed fire suppression system cylinder and/or panel and fire detection and alarm system control panel;

i. owner of system and address of owner (to be noted on rear of tag).

7. Other information may be permitted on the tag after a review and approval by the fire marshal. A request for additional information shall be made to the fire marshal in writing with a sample tag indicating the requested additions.

8. Stenciled information on fire hoses shall include the test pressure, date of test and firm license number.

B. Partial Impairment Tags (Yellow Tags)

1. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of portable fire extinguishers, fixed fire suppression systems, and/or fire detection and alarm systems shall be allowed to have a partial impairment tag, to be yellow in color, which is to be used when minor deficiencies are found on the equipment or system. The partial impairment tag is in addition to the requirement of having a service tag and impairment tag.

2. A partial impairment tag may be placed on all equipment or systems in which there is a deficiency with the equipment or system but where the equipment or system is still functional. This would include situations where routine service is needed but has not been approved by the owner of the equipment or system as well as systems which are required to be monitored off-site but monitoring is not provided.

3. A partial impairment tag shall not remain on equipment or a system for more than 60 days. If the problem is not corrected after 60 days the certified firm shall be required to notify, in writing, the Office of the State Fire Marshal Inspection Section.

4. Partial impairment tags must contain all of the information listed below:

a. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters in bold face type);

b. servicing firm's name, address and telephone number;

c. servicing firm's State Fire Marshal certificate number;

d. servicing technician's name and State Fire Marshal license number to be printed on tag either at the time of service or preprinted;

e. servicing technician's signature to be signed at time of inspection (no preprinted signatures nor initials are permitted; (apprentices are not permitted to sign tags);

f. day, month and year in which the impairment was found (to be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of impairment found (to be hand written on rear of tag); If additional space is needed to note the impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

h. serial number of portable fire extinguisher or fixed fire suppression system cylinder and/or panel, fire detection and alarm system control panel;

i. owner of system and address of owner (to be noted on rear of tag).

C. Impairment Tags (Red Tags)

1. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of portable fire extinguishers, fixed fire suppression systems, and/or fire detection and alarm systems shall have an impairment tag, to be red in color, which is to be used when major deficiencies are found on these systems or equipment.

2. An impairment tag shall be placed on all fixed fire suppression or fire detection and alarm systems upon discovery that the system or equipment is impaired to the point that life safety is at risk or to the point that the automatic or manual discharge system will be prevented from functioning as intended.

3. Portable fire extinguishers shall be red tagged when the equipment is inoperable for any reason.

4. Impairment tags shall also be placed on any equipment or system where life safety is in imminent danger.

5. A red tag is not required to be placed on a fire hose which fails hydrostatic testing, but rather, the fire hose shall be removed from service.

6. Written notice shall be made to the owner and to the Office of the State Fire Marshal Inspection Section by the certified firm as soon as is practically possible but shall not exceed two working days after the system or equipment is red tagged. Notification to the Office of the State Fire Marshal is not needed for fire hoses removed from service. Written notification can be by electronic mail or facsimile. The Office of State Fire Marshal shall provide a form for notification. Additional notification (written or verbally) should be made to the local fire department when a system is red tagged.

7. Impairment tags must contain all of the information listed below:

a. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters in bold face type);

b. servicing firm's name, address and telephone number;

c. servicing firm's State Fire Marshal certificate number;

d. servicing technician's name and State Fire Marshal license number to be printed on tag either at the time of service or preprinted;

e. servicing technician's signature to be signed at time of inspection (no preprinted signatures nor initials are permitted; apprentices are not permitted to sign tags);

f. day, month and year in which the inspection was performed (to be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of impairment found (to be hand written on rear of tag). If additional space is needed to note the impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

h. serial number of portable fire extinguisher, fixed fire suppression system cylinder and/or panel, or fire detection and alarm system control panel;

i. owner of system and address of owner (to be noted on rear of tag).

8. Notification of fire protection equipment/systems inspections where no deficiencies are found need not be sent to the Office of the State Fire Marshal unless specifically requested.

D. Written Notification. The following information is required to be sent when written notification is made to the Office of the State Fire Marshal Inspection Section:

1. name, address, and telephone number of the owner of the system;

2. name, address, telephone number, and certificate number of the firm noting the impairment;

3. name and license number of the technician who did the inspection;

4. type of system (manufacturer and model number should also be included);

5. code, inspection chapter and year edition firm used for inspection;

6. reason for the impairment (Note: a copy of the inspection or service report shall be included); and

7. date system or equipment was red or yellow tagged.

E. Non-Required and/or Non-Conforming Systems. Where a fire protection system is non-required or permitted to be installed in a non-conforming state by this office or is

both non-required and non-conforming then the following additions shall be made to the guidelines set forth in this Section.

1. Each firm shall stamp or write on the installation tag and/or service tag one of the following statements as applicable:

- a. "NON-REQUIRED SYSTEM"; or
- b. "NON-CONFORMING SYSTEM"; or
- c. "NON-REQUIRED/NON-CONFORMING SYSTEM".

2. Such print or stamp shall be in all capital lettering and be written or stamped so as to not obscure other information provided on the tag.

3. This does not supersede the requirements to place a yellow or red tag on a system that is impaired in any way.

F. Miscellaneous Provisions

1. On all fixed fire suppression and fire detection and alarm systems, a plastic pocket pouch/sleeve shall also be attached to the panel, or tank, as appropriate, where all tags shall be maintained for a period of one year after the system's annual inspection. For kitchen fixed fire suppression systems, the pocket pouch/sleeve shall be attached at or near a manual pull station. Upon a new annual or six month certification, all previous service tags may be removed and given to the owner to keep on file. This requirement does not apply to portable fire extinguishers or fire hoses.

2. All tags must be card stock, plastic, vinyl, tyevak or metal in order to maintain the running record for the system. One sided or self adhesive service tags are not permitted except for fire protection equipment or systems in areas subject to adverse conditions. Self adhesive tags shall contain all of the information required on hanging tags.

3. All tags shall be 5 1/4 inches in height and 2 5/8 inches in width.

4. Firms shall have their tags printed and one forwarded to the State Fire Marshal's Licensing Section for approval and incorporation in the firm's file.

5. Tags may be removed only by licensed employees of a certified firm or employees of the State Fire Marshal's Office and certified fire prevention bureaus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1334 (June 2000), LR 33:1675 (August 2007).

§3041. Prohibited Acts and Equipment

A. The following acts are prohibited and shall be considered grounds for administrative action to be taken against firms, persons and/or employees committing such:

1. charging a customer for work that was not performed;
2. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the state fire marshal, his designated representative or other public official;
3. impersonating the state fire marshal, his designated representative or any other public official;
4. intimidating or coercing a customer;
5. certifying, hydrostatically testing, inspecting, installing, integrating, maintaining or servicing fire protection systems and/or equipment contrary to plans

submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;

6. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;

7. falsifying tags, labels, stenciling, inspection reports, invoices, system reports, and/or other documents;

8. working an apprentice, or as an apprentice, without direct supervision by a technician licensed to perform the work being done and licensed to the same firm;

9. working an employee without the appropriate endorsement of license;

10. working without the appropriate endorsement of firm certificate or license;

11. working with an expired firm certificate or license;

12. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;

13. contracting to a firm or person who is not properly certified or licensed through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 40:1664.1 et seq., or these rules;

14. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;

15. installing a fixed fire suppression system, or fire detection and alarm system prior to submitting plans and required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;

16. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's U.L. listed installation and service manuals to properly certify, hydrostatic test, inspect, install, integrate, maintain or service the systems or equipment for which a firm is certified;

17. failing to adhere to all applicable laws and rules governing fire protection systems and/or equipment as promulgated by the Office of the State Fire Marshal;

18. engaging in false, misleading or deceptive acts or practices;

19. aiding and abetting an unlicensed person or firm in the certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of a portable fire extinguisher, fire hose, fixed fire suppression equipment and/or system, or fire detection and alarm equipment and/or system.

B. The following portable fire extinguishers and cylinders are prohibited from use:

1. carbon tetrachloride portables;
2. portable fire extinguishers or fixed fire suppression system cylinders without labels of an approved testing laboratory or name plates:
 - a. exception: a portable fire extinguisher or fixed fire suppression system cylinder in an industrial facility, whose original label or name plate has been removed for refurbishing, may have a manufacturer approved replacement label or name plate reattached if maintenance records, as provided below, are maintained;
 - b. maintenance records shall include the following:
 - i. manufacturer;
 - ii. type and size of the portable fire extinguisher or fixed fire suppression system cylinder;

iii. serial number or unique tracking number of portable fire extinguisher or fixed fire suppression system cylinder; and

iv. dates and types of service performed;

3. any portable fire extinguisher or fixed fire suppression system cylinder prohibited by the adopted NFPA codes and standards enumerated in LAC 55:V:103 and these rules;

4. any fire protection equipment or system which has been recalled from the manufacturer or has had its listing from an approved testing laboratory removed;

5. systems or portables in which replacement parts are no longer available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1336 (June 2000), LR 33:1677 (August 2007).

§3043. Enforcement

A. The State Fire Marshal or his designated representative, shall make, or cause to be made, from time to time, inspections of a firm's physical locations, vehicles or job sites to verify required certificates, employee lists, employee licenses, business records and insurances, equipment, tools, NFPA codes, standards and manufacturer's manuals and work/service performed, and as circumstances dictate, to determine that portable fire extinguisher, fire hose, fixed fire suppression and fire detection and alarm firms and their employees are engaging in activity in accordance with the requirements of R.S. 40:1664 et seq., and these rules.

B. The State Fire Marshal shall investigate all complaints of alleged violations of R.S. 40:1574 et seq., 40:1664.1 et seq., and these rules. Complaints of alleged violations shall be made in writing to the Licensing Section of the State Fire Marshal's office. The office shall make available a complaint form to be used as needed. Penalties shall be administered to those firms and /or employees found to have violated these laws and/or rules. Proposed administrative penalty letters shall act as official notification of alleged violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1337 (June 2000), LR 33:1678 (August 2007).

§3045. Administrative Actions

A. The State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a certificate of registration, or license and impose administrative penalties, if, after notice and hearing, as provided for by the Administrative Procedures Act, it is found that a person, certified firm, or licensee or an applicant for registration, or license, failed to comply with the provisions of R.S. 40:1664.1 et seq., or these rules.

1. Offenses. The following categories shall denote classification of offenses for persons, firms and employees for determining the penalty to be imposed.

a. Minor:

i. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;

ii. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;

iii. working with an expired (31-45 days) license, or certificate of registration;

iv. failing to properly display a firm certificate or an individual license.

b. Serious:

i. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the State Fire Marshal, his designated representative or other public official;

ii. certifying, hydrostatically testing, inspecting, installing, integrating, maintaining or servicing fire protection systems and/or equipment contrary to plans submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;

iii. working an apprentice, or as an apprentice, without direct supervision by a technician licensed to perform the work being done and licensed to the same firm;

iv. working an employee without the appropriate endorsement of license;

v. working without the appropriate endorsement of firm certificate or license;

vi. working with an expired (46-60 days) license or firm certificate;

viii. contracting to a firm or person who is not properly certified or licensed through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 1664.1 et seq. or these rules;

ix. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's U.L. listed installation and service manuals to properly certify, hydrostatic test, inspect, install, integrate, maintain or service the systems or equipment for which a firm is certified;

x. committing five or more Minor offenses within a three year period.

c. Major:

i. charging a customer for work that was not performed;

ii. impersonating the state fire marshal, his designated representative or any other public official;

iii. intimidating or coercing a customer;

iv. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;

v. falsifying tags, labels, stenciling, inspection reports, invoices and/or other documents;

vi. working without any or with a suspended firm certificate of registration or license;

vii. working an employee with a suspended license;

viii. aiding and abetting an unlicensed person or firm in the certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of a portable fire extinguisher, fire hose, fixed fire suppression equipment and/or system, fire detection and alarm equipment and/or system;

ix. installing a fixed fire suppression system, or fire alarm and detection system prior to submitting plans and

required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;

x.. committing three or more serious offenses within a three year period;

xi. engaging in false, misleading or deceptive acts or practices.

2. Penalties. The following fine schedule shall be used to assess fines to persons, firms, and/or employees who violate the laws and rules governing the portable fire extinguisher, fire hose, fixed fire suppression and fire detection and alarm industries. Penalties will be imposed to persons, firms and/or employees based on the classification of offense. Each classification of offense will have a minimum and maximum fine shown and any other administrative penalty that may be imposed.

a. Firms and/or Persons

i. Minor—\$50 fine to \$250 fine and/or official warnings may be imposed.

ii. Serious—\$250 fine to \$1,000 fine and/or suspensions of up to 90 days may be imposed.

iii. Major—\$1,000 fine to \$5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of certificate may be imposed.

b. Employees and/or Persons

i. Minor—\$10 fine to \$50 fine and/or official warnings may be imposed.

ii. Serious—\$50 fine to \$500 fine and/or suspensions of up to 90 days may be imposed.

iii. Major—\$500 to \$5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of license may be imposed.

c. The State Fire Marshal may deviate from this fine schedule where circumstances and/or evidence warrant a more stringent or more lenient penalty.

d. In lieu of fine payments, the State Fire Marshal may require remedial or additional training be obtained by those found in violation.

e. Those offenses not enumerated in this list shall receive penalties for violations of similar nature.

f. The Office of the State Fire Marshal may also pursue criminal charges or injunctive relief for any of the above enumerated offenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1337 (June 2000), LR 33:1678 (August 2007).

§3047. Severability

A. If any provision of these rules or the application thereof to any firm, person, employee or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1338 (June 2000), LR 33:1679 (August 2007).

§3049. Adopted Standards

A. The office adopts by reference in their entirety those copyrighted codes or standards enumerated in LAC 55:V.103 published by and available from the National Fire Protection Association, Inc. (NFPA), Batterymarch Park, Quincy, Massachusetts, 02268. A copy of the codes and standards shall be kept available for public inspection in the Office of the State Fire Marshal. In addition to those listed standards, the following shall also be adhered to as applicable:

1. ASME/ANSI A17.1—Safety Code for Elevators and Escalators;

2. ASME/ANSI A17.3—Safety Code for Existing Elevators and Escalators;

3. ASME/ANSI A117.1—Specifications for Handicapped Accessibility;

4. ADAAG—American Disability Accessibility Act Guidelines;

5. United States Department of Transportation;

6. Code of Federal Regulations 49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1339 (June 2000), LR 33:1679 (August 2007).

§3051. National Recognized Testing Laboratory

A. The criteria for recognition by the Office of State Fire Marshal as a "Nationally Recognized Testing Laboratory" shall be as follows. The applicant laboratory's portable fire extinguisher testing standards shall meet or exceed the best listed national standards:

1. Fire Test Standards—ANSI/UL 154, CAN4-S503-M83

2. Performance Standards

a. CO₂ Types—ANSI/UL 154, CAN4-S503-M83

b. Dry Chemical Types—ANSI/UL 299, ULC-S504

c. Halon Types—ANSI/UL 1093, ULC-S504

d. 2-1/2 Gallon Stored Pressure Water Types—ANSI/UL 626

e. Factory Follow-Up on Third Party Certified Portable Fire Extinguishers—ANSI/UL 1803

f. Foam Types—ANSI/UL 8

B. The applicant laboratory shall maintain a follow-up inspection program to confirm that the manufacturer is providing the controls, inspections, and tests necessary to assure that all current manufactured extinguishers will meet the laboratory's testing standards. This follow-up inspection shall occur no less than once each six months for the first two years and once each year thereafter.

1. The application by a testing laboratory for recognition by the State Fire Marshal as a "nationally recognized testing laboratory" shall not be on any particular form but shall include all of the information and material requested in Subparagraphs below:

a. the address and telephone number of the main facility and all branch offices;

b. a current organizational chart showing the relationship between administration, operation, and quality control;

c. resumes of the education and experience of key personnel;

d. a floor plan of the main facility and all branch offices indicating location of the equipment used for testing portable fire extinguishers;

e. a list of all equipment used to test portable fire extinguishers, identified by manufacturer, model number and serial number; detailed plans and specifications shall be submitted on any testing equipment fabricated by the applicant;

f. procedures for selecting, receiving, storage, handling, and shipping of test specimens;

g. test standards and procedures most frequently used;

h. method and frequency of test equipment calibration;

i. procedure for safekeeping of records and files;

j. copies of all data sheets and test report forms;

k. facsimiles of all contracts executed between the testing laboratory and portable extinguisher clients;

l. procedure for periodic updating of the report;

m. method of distributing test reports and certifications, including an indication of who may obtain copies of the final reports and how the reports may be obtained;

n. a copy of the laboratory's partnership agreement, if a partnership, or of the articles of incorporation, if a corporation, and a copy of any by-laws;

o. a list of all the portable fire extinguishers presently listed by the testing laboratory showing the manufacturer and the model number;

p. copies of the test reports on all listed portable extinguishers which must be in sufficient detail to provide for complete verification and evaluation of the operations and objectives, and must include the signature of personnel performing the test and must also include the name of the supervisory engineer;

q. whether the applicant testing laboratory has been recognized as a "nationally recognized testing laboratory" by any other state or by an organized, voluntary recognized organization such as the National Voluntary Laboratory Association Program and whether recognition by any other state or organization has been denied;

r. how long the applicant testing laboratory has tested portable extinguishers;

s. a notarized statement of independence which shall state that, with reference to the laboratory's testing of portable fire extinguishers:

i. there are no managerial affiliations with any producer, supplier, or vendor;

ii. changes in any major test equipment;

iii. establishment of a new branch office or facility at which portable fire extinguishers are to be tested;

iv. changes in principal officers, key supervisory personnel, or key testing personnel in the company.

C. This office approves Underwriters Laboratories, Inc., Factory Mutual Research Corporation and the United States Testing Company, Inc., as nationally recognized testing laboratories for the purpose of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1339 (June 2000), LR 33:1679 (August 2007).

§3053. Equipment and Facilities

A. Each certified firm location shall be required to possess the equipment, tools, NFPA codes, standards and manufacturer's UL listed installation and service manuals necessary to properly certify, hydrostatic test, inspect, install, integrate, maintain or service the systems or equipment for which it is certified. If such work is performed from a vehicle, then the vehicle shall be required to possess the necessary equipment, tools, NFPA codes, standards and manuals. Required codes, standards and manuals may be either in print or in an electronic format.

B. The following equipment and code books shall be required depending upon the firm's certification endorsement.

1. Portable Fire Extinguisher/Fire Hose:

a. service and impairment tags;

b. six year maintenance and hydrostatic test labels;

c. external verification collars;

d. stenciling tools and supplies;

e. tamper seals (14 lbs. maximum breakage). the tamper seal shall reflect the current or previous calendar year date when installed;

f. test apparatus including appropriate adapters, fittings and tools;

g. facilities for leak testing of pressurized extinguishers;

h. approved equipment for drying cylinders;

i. approved closed recovery unit;

j. department of agriculture approved scales for unit measure (for shop or vehicle). Scales shall be certified annually by the Department of Agriculture or its designated agent;

k. field and cartridge scales;

l. appropriate recharge agents and fill funnels;

m. cylinder inspection light;

n. dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;

o. supply of spare parts for respective manufacturers and type of fire extinguishers serviced;

p. proper wrenches with non-serrated jaws or valve puller (hydraulic or electric);

q. continuity tester and labels;

r. calibrated gauges and gauge tester;

s. working hydrostatic test pump for testing cylinders and fire hose, with flexible connection, check valves and fittings;

t. adequate safety cage for hydrostatic testing of low pressure cylinders.

2. Fixed, Pre-Engineered or Kitchen Fire Suppression:

a. service, partial impairment (optional) and impairment tags;

b. installation tags;

c. six year maintenance and hydrostatic test labels;

d. external verification collars;

e. tamper seals (14 lbs. maximum breakage). The tamper seal shall reflect the current or previous calendar year date when installed;

f. test apparatus including appropriate adapters, fittings and tools;

g. facilities for leak testing of pressurized cylinders;

h. approved equipment for drying cylinders;

i. approved closed recovery unit;

- j. Department of Agriculture approved scales for unit measure. Scales shall be certified annually by the Department of Agriculture or its designated agent;
 - k. appropriate recharge agents and fill funnels;
 - l. cylinder inspection light;
 - m. dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;
 - n. supply of spare parts for respective manufacturers and type of systems serviced;
 - o. proper wrenches with non-serrated jaws or valve puller (hydraulic or electric);
 - p. wire cutters;
 - q. pipe threader;
 - r. pipe reamer;
 - s. flaring tools;
 - t. pipe wrenches;
 - u. calibrated gauges and gauge tester;
 - v. working hydrostatic test pump, with flexible connection, check valves and fittings;
 - w. adequate safety cage for hydrostatic testing of low pressure cylinders;
 - x. manometer (for engineered systems only);
 - y. fan test equipment or have access to such equipment through contract to another firm (for engineered systems only);
 - z. halon recovery equipment or have access to such equipment through contract to another firm (for Engineered Systems only).
3. Fire Alarms:
- a. service, partial impairment (optional) and impairment tags;
 - b. installation tags;
 - c. manufacturer approved smoke detector sensitivity or calibration testing equipment or have access to such equipment through contract to another firm;
 - d. multimeter;
 - e. sound level meter.
4. DOT Hydrostatic Testing:
- a. adequate hydrostatic test equipment for high pressure testing and calibrated cylinder including but not limited to appropriate adapters, fittings and tools;
 - b. adequate equipment for test dating high pressure cylinders (over 900 PSI). Die stamps must be a minimum of 1/4 inch;
 - c. clock with sweep second hand on or close to hydrostatic test apparatus;
 - d. equipment for drying cylinders;
 - e. cylinder inspection light;
 - f. proper wrenches with non-serrated jaws or valve puller (hydraulic or electric).
5. Code Books (latest edition as enumerated in LAC 55:V.103 and these rules)
- a. Portable Fire Extinguisher/Fire Hose—NFPA 10, 101, 1961 and 1962.
 - b. Fixed Fire Suppression—NFPA 11, 11A, 12, 12A, 17, 17A, 96, 101 and 2001.
 - c. Pre-Engineered—NFPA 11, 11A, 12, 12A, 17, 17A, 96, 101 and 2001.
 - d. Kitchen Suppression—NFPA 17, 17A, 96 and 101.
 - e. Fire Alarm—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

f. Fire Alarm (non-required)—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

g. Fire Alarm Owner—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

h. DOT Hydrostatic Testing—CFR 49, NFPA 1961 and 1962.

C. The State Fire Marshal or his representative may inspect a firm's physical location(s) or vehicle(s) to ensure the proper equipment, tools, NFPA codes, NFPA standards, manufacturer's UL listed installation and service manuals and business records and insurances are possessed by the firm. Firms must possess all applicable manufacturers' installation and service manuals for the systems and/or equipment it services.

D. Business records shall include, but not be limited to, invoices, work orders, service reports, payroll records, federal and state tax information for employees, occupational licenses, income tax filings, property tax notifications and filings, utility records, certificates of insurance for general liability and workmen compensation coverage and workers compensation reports and/or filings.

E. The State Fire Marshal or his representative may require that a firm or its employee(s) demonstrate a proficiency to use the necessary equipment to properly certify, hydrostatically test, inspect, install, integrate, maintain or service portable fire extinguishers, fixed fire suppression systems/equipment and fire detection and alarm systems/equipment. Proficiency shall be deemed to be achieved if the system or equipment complies with the applicable NFPA code or standard and/or manufacturer's specifications.

F. For those firms or their employee(s) which do not possess the proper equipment, tools and manuals or who fail to demonstrate the ability to properly perform the required work, then an order of correction shall be made to the contractor or his employee to obtain the required equipment, tools, NFPA codes, standards or manual or to obtain additional training within a 30-day period. Another inspection shall be conducted by the State Fire Marshal or his representative to verify compliance with the order of correction. Good cause must be shown if proficiency is not shown or the required equipment, tools, NFPA codes, standards or manuals are not obtained by the time of the second inspection. Additional time may be granted for good cause. If good cause is not shown, then administrative action may be pursued.

G. The office may specifically enumerate additional required equipment or business records at a later date should it be deemed necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1339 (June 2000), LR 33:1680 (August 2007).

§3055. Plan Review

A. No system requiring plan submittal in accordance with R.S. 40:1574 et seq., shall be installed or integrated prior to submitting plans with required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal. However, the installation of wiring only for fire detection

and alarm systems shall be permitted upon receipt of plans by the Office of the State Fire Marshal, Plan Review Section. No fire detection devices or panels shall be installed prior to review or written authorization by the Office of the State Fire Marshal.

B. Only listed qualifiers of a firm shall be listed on applications for full plan review or exemption to full plan review. Additionally, any correspondence regarding a submittal, to include but not be limited to, telephone, email or written correspondence, shall only be through a listed qualifier of the firm, owner of the firm, a professional of record or owner of the building.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1340 (June 2000), LR 33:1681 (August 2007).

§3057. Electrical Contractors

A. All electrical contractors who have met all requirements and passed a prescribed written examination based upon National Fire Protection Association (NFPA) Code 70, the National Electrical Code, that has been given either by a recognized political subdivision of the state of Louisiana or by the State Licensing Board for Contractors, shall be authorized to install fire detection and alarm components or interconnected smoke detectors in accordance with manufacturer's specifications and applicable National Fire Protection Association (NFPA) codes which are listed in Section 3053 of this Chapter.

B. The certifying, inspecting, integrating, maintenance and servicing of a fire detection and alarm system shall be performed only by a fire detection and alarm firm that is certified, and its employees licensed with the Office of the State Fire Marshal to perform such work.

C. Electrical contractors shall be limited to the installation of wiring, conduit raceways, and/or devices for fire detection and alarm systems. All connections or final terminations made within the alarm control panel must be made by licensed employees of the fire detection and alarm firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 26:1340 (June 2000), amended LR 33:1682 (August 2007).

§3059. Miscellaneous Provisions

A. Marking of Vehicles. All service vehicles owned or operated by firms or their employees used for regulated activities, as defined by R.S. 40:1664.1 et seq., and these rules shall have the firm name and firm certificate number permanently inscribed, painted, stenciled or affixed by magnetic means on such vehicles. Such markings shall be a minimum of 2 1/2 inches in height and not less than 1/4 inch in width. Letters and numbers shall be on a contrasting background and be conspicuously seen from the outside of the vehicle.

B. Restrictions

1. Certificate or license holders are not agents or representatives of the state of Louisiana, the Department of Public Safety or the Office of the State Fire Marshal. No claims or inferences of such shall be made.

2. A certificate or license does not authorize anyone to enforce these rules or to enter any building without the owner's permission or to certify, service, hydrostatically test, inspect, install integrate, or maintain fire protection equipment and/or systems without the owner's permission.

3. Certificate and license holders shall not allow the use of their certificate or licenses by other firms, persons or employees.

4. A certificate or license holder shall not perform any activity relating to portable fire extinguishers, fire hoses, fixed fire suppression equipment/system, or fire detection and alarm equipment/systems unless employed by and within the course and scope of that employment with a firm regulated by the provisions of R.S.40:1664.1 et seq.

5. A person shall not perform any act for which a certificate or license is required unless he is:

a. first certified or licensed to perform such acts; and

b. employed by a firm certified to perform those acts; and

c. performing those acts for the certified firm by which he is employed.

6. An apprentice, as defined in these rules, shall not perform any activity regulated by R.S.40:1664.1 et seq., unless employed by a certified firm and is supervised by a license holder authorized to perform such act or acts Both the apprentice and licensee shall be employed by the same certified firm.

7. Nothing in these rules shall prevent an appropriately licensed firm or person from certifying, hydrostatically testing, inspecting, installing, integrating, maintaining or servicing any manufacturer's portable fire extinguishers, fire hose, fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems.

C. Multiple Names. A firm which uses multiple names must apply for a separate certificate of registration if each named firm has a separate state or federal tax number. All "doing business as" names shall be registered with this office at the time of application.

D. Required Inspection

1. The following shall be the building owner's responsibility.

a. Portable fire extinguishers shall be certified annually by a firm with a Portable Fire Extinguisher/Fire Hose endorsement.

b. Pre-engineered fixed fire suppression systems shall be certified at a minimum annually by a firm with either a Fixed Fire Suppression System endorsement or Pre-Engineered Fixed Fire Suppression endorsement. If the suppression system includes electronic fire detection devices, then the firm must also have the appropriate Fire Alarm endorsement or contract to a firm with such.

c. Engineered fixed fire suppression systems shall be certified at a minimum annually by a firm with a Fixed Fire Suppression System endorsement. If the suppression system includes electronic fire detection devices, then the firm must also have the appropriate Fire Alarm endorsement or contract to a firm with such.

d. Clean Agent Gas (Halon 1301 Replacement) fixed fire suppression systems shall be certified at a

minimum every six months by a firm with a Fixed Fire Suppression System endorsement and the appropriate Fire Alarm endorsement or contract to a firm with such.

e. Kitchen fixed fire suppression systems shall be certified at a minimum every six months by a firm with either a Fixed Fire Suppression System endorsement, or a Pre-Engineered Fixed Fire Suppression endorsement, or a Kitchen Fixed Fire Suppression System endorsement. If the suppression system includes electronic fire detection devices, then the firm must also have the appropriate Fire Alarm endorsement or contract to a firm with such.

f. Fire alarm and detection systems shall be certified at a minimum annually by a firm with a Fire Alarm endorsement for required fire alarm systems and a Fire Alarm or Fire Alarm (non-required) endorsement for non-required fire alarm systems.

g. Fire hoses shall be certified at a minimum annually by a firm with a Portable Fire Extinguisher/Fire Hose endorsement or a fire protection sprinkler contractor as outlined by R.S.40:1664.1 et seq.

2. For the purpose of determining the exact date of a required certification, inspection or service, the following guidelines shall apply. Where only the year is known but not the month, January shall be used for the month, where the month is known but not the day, the first day of the month shall be used.

3. The certified firm shall not be responsible for more frequent inspections as required by the applicable engineered specifications, manufacturer's specifications or per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards unless under contract to perform such.

E. Advertising. All advertising, including but not limited to telephone advertising, shall indicate a firm's certificate of registration number.

F. Service Invoices and Inspection Reports. All service invoices or inspection reports shall reflect the inspection, installation, maintenance, or service performed, all parts replaced, date of service and the technician who performed the work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 26:1341 (June 2000), amended LR 33:1682 (August 2007).

Jill Boudreaux
Undersecretary

0708#035

RULE

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

Commercial Plan Review (LAC 55:VI.505)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council has enacted a new Rule under Chapter 5 to

temporarily facilitate the availability of commercial plan review to architects, engineers, owners, parishes and municipalities in those local jurisdictions that are currently unable to provide this code enforcement service.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

**Chapter 5. Enforcement of the Louisiana State
Uniform Construction Code**

§505. Commercial Plan Review

A. Until December 31, 2007, where a parish or municipality is not providing plan review, then architects, engineers, owners, parishes or municipalities on commercial projects may request International Building Code plan review by the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:1683 (August 2007).

Jill Boudreaux
Acting Undersecretary

0708#042

RULE

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

**Municipal or Parish Building Code Enforcement Officers
Classifications and Required Certifications
(LAC 55:VI.703)**

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council has amended Chapter 7 to facilitate the number of individuals who are qualified to obtain a certificate of registration from the Louisiana State Uniform Construction Code Council.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 7. Certificates of Registration

**§703. Classifications and Required Certifications for
Municipal or Parish Building Code Enforcement
Officers**

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

2. Specialty Classifications

a. Commercial Inspectors

i. Commercial Building Inspector

Requirements—possess a current ICC Commercial Building Inspector, ICC Building Inspector, or ICC Commercial Combination Inspector certificate.

ii. Commercial Electrical Inspector

Requirements—possess a current ICC Commercial Electrical Inspector, ICC Electrical Inspector, or ICC Commercial Combination Inspector certificate.

iii. Commercial Mechanical Inspector

Requirements—possess a current ICC Commercial

Mechanical Inspector, ICC Mechanical Inspector, or ICC Commercial Combination Inspector certificate.

iv. Commercial Plumbing Inspector Requirements—possess a current ICC Commercial Plumbing Inspector, ICC Plumbing Inspector, or ICC Commercial Combination Inspector certificate.

v. Commercial Energy Inspector Requirements—shall be enforced by the Office of the State Fire Marshal.

b. Commercial and Residential Plan Examiners or Reviewers

i. Building Plans Examiner Requirements—possess a current ICC Commercial Building Plans Examiner certificate.

ii. Electrical Plans Examiner Requirements—possess a current ICC Commercial Electrical Plans Examiner certificate.

iii. Mechanical Plans Examiner Requirements—possess a current ICC Commercial Mechanical Plans Examiner certificate.

iv. Plumbing Plans Examiner Requirements—possess a current ICC Commercial Plumbing Plans Examiner certificate.

v. Commercial Energy Plans Examiner Requirements—shall be enforced by the Office of the State Fire Marshal.

c. Residential Inspectors

i. Residential Building Inspector Requirements—possess a current ICC Residential Inspector, ICC Building Inspector, or ICC Residential Combination Inspector certificate.

ii. Residential Electrical Inspector Requirements—possess a current ICC Residential Electrical Inspector, ICC Electrical Inspector, or ICC Residential Combination Inspector certificate.

iii. Residential Mechanical Inspector Requirements—possess a current ICC Residential Mechanical Inspector, ICC Mechanical Inspector, or ICC Residential Combination Inspector certificate.

iv. Residential Plumbing Inspector Requirements—possess a current ICC Residential Plumbing Inspector, ICC Plumbing Inspector, or ICC Residential Combination Inspector certificate.

v. Residential Energy Inspector Requirements—possess a current ICC Residential Energy Inspector/Plans Examiner certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 33:1683 (August 2007).

Jill P. Boudreaux
Acting Undersecretary

0708#043

RULE

Department of Revenue Office of Alcohol and Tobacco Control

Class C-Package Store (LAC 55:VII.327)

Under the authority of R.S. 26:71.2 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has promulgated LAC 55:VII.327 relative to operation as a Class C-Package Store retail alcoholic beverage outlet, as authorized and directed by the Louisiana Legislature during the 2006 Regular Session.

Louisiana Administrative Code 55:VII.327 provides for conduct allowable in the operation of a Class C-Package Store to ensure the safe and responsible distribution of specialty frozen alcoholic beverage, commonly known as frozen daiquiris, under the newly-created permit.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 3. Alcoholic Beverage Permits

§327. Class C-Package Store Retail Alcoholic Beverage Permits

A. Definitions

Batch—any mixture of ingredients or concoction prepared, blended, mixed, or otherwise combined in the preparation of a regulated or alcoholic beverage, as defined by R.S. 26:2 and 241, to be served to patrons in the form of specialty frozen drinks, commonly known as frozen daiquiris.

Batch Freezer—any refrigeration or cooling unit, machine, device or processor of any kind in which a *batch*, as defined in this Section, of specialty frozen drinks, commonly known as frozen daiquiris, is placed for purposes of transforming the batch into frozen specialty drinks for service to patrons, regardless of whether the refrigeration or cooling unit, machine, device or processor includes a spigot or other mechanism for pouring the specialty frozen drink into single serving closed containers for service to patrons.

B. In order to qualify for a Class C-package store retail alcoholic beverage permit, the applicant must:

1. operate a place of business where the sale and service of alcoholic beverages represents more than 50 percent of the business' total annual retail sales revenue;

2. not offer to sell, sell, or otherwise distribute motor fuel anywhere on or about the licensed premises;

3. sell and serve alcoholic beverages, including frozen specialty alcoholic beverages, in closed containers prepared for transportation and consumption off the licensed premises only;

4. maintain a public habitable floor area of no less than 1,000 square feet;

5. not allow any person under the age of 18 years to enter, visit, or loiter in or about the licensed premises;

6. not employ anyone under the age of 18 years;

7. not allow the consumption of any alcoholic beverage for any purpose of reason on or about the licensed premises;

8. not permit the mixing, sale, or service of mixed alcoholic beverages on the licensed premises;

9. notwithstanding Paragraph 8 above, a Class C-package store license holder may combine non-alcoholic frozen specialty mixes with factory sealed and packaged alcoholic beverages on the licensed premises for the sole purpose of preparing a *batch*, as defined in Subsection A of this Section, which batch is placed in a *batch freezer*, as defined in Subsection A of this Section designed for the dispensing of frozen specialty alcoholic beverages, provided the license holder complies with the following at all times:

a. the mixing of a *batch*, as defined in Subsection A above, shall at all times be conducted out of the view of the public;

b. open bottles of manufacturer-packaged alcoholic beverage or any other open alcoholic beverage shall be kept out of view of the public;

c. all frozen specialty drinks shall be dispensed from batch freezer machines into containers affixed with a lid for transportation and consumption by the customer off of the licensed establishment's premises. The use of blenders or similar devices is prohibited;

d. no additional alcoholic beverage shall be added to the batch after the batch is placed into the batch freezer machine. The sale and service of additional "shots" or any other portion of any alcoholic beverage or the introduction of any additional alcohol into a container used for the sale or service of frozen specialty drinks to the public is prohibited;

e. the preparation and/or sale of one or more drinks commonly known as "highballs," "cocktails," or any type of "mixed drink" other than frozen specialty alcoholic beverages, as described and/or defined in this Section, is expressly prohibited on or about the licensed premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:71.2B.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 33:1684 (August 2007).

Murphy J. Painter
Commissioner

0708#053

RULE

**Department of Revenue
Office of Alcohol and Tobacco Control**

Wine Producer Permits (LAC 55:VII.324)

Under the authority of R.S. 26:85 and 793, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control has promulgated LAC 55:VII.324 relative to the safe and responsible offering for sale, sale and distribution of product

of wine producers at fairs, festivals, farmer's markets and similar venues.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 3. Liquor Credit Regulations

§324. Wine Producers; Fairs, Festivals, Farmer's Markets and Similar Venues

A. For purposes of this Section, the following definitions shall apply.

1. *Fair; Festival, Farmer's Market or Other Similar Venue*—any non-profit, state or local governmental organizational event being held in a limited duration capacity.

2. *Wine Producer*—the holder of a valid unsuspended wine producers permit, as defined in R.S. 26:2(21).

B. Wine producers may, with local authority, offer for sale and sell directly to consumers at fairs, festivals, farmer's markets and other similar venues under the following terms and/or conditions.

1. Any and all sales at fairs, festivals, farmer's markets and similar venues shall be limited in duration as provided in LAC 55:VII.323.

2. Notwithstanding Paragraph 1 of Subsection B above, if the site of the fair, festival, farmer's market or similar venue is utilized by a state or local governmental entity for purpose of promoting tourism and/or agribusiness, durational limitations provided in LAC 55:VII.323 shall not apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:85 and 793.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 33:1685 (August 2007).

Murphy J. Painter
Commissioner

0708#054

RULE

**Department of Social Services
Office of Community Services**

Daycare Services (LAC 67:V.2301)

The Department of Social Services, Office of Community Services, has amended the Louisiana Administrative Code, Title 67, Part V, Subpart 4, Family Services, pursuant to the authority granted to the department by the Child Care and Development Fund and to establish standard rates for day care services reimbursed by the department.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 4. Family Services

Chapter 23. Daycare

§2301. Daycare Services

A. ...

B. Class A Day Care Centers will be reimbursed for day care services at the same reimbursement rate as the Office of

Family Support Child Care Assistance Program. When a center's rate is less than the maximum amount reimbursed by the department, the department reimbursement rate will be the center's usual charge for day care services.

C. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 11:689 (July 1985), amended LR 18:868 (August 1992), LR 25:2443 (December 1999), LR 31:101 (January 2005), LR 33:1685 (August 2007).

Ann S. Williamson
Secretary

0708#077

RULE

Department of Social Services Office of Family Support

FITAP/STEP—Eligibility and Assessment (LAC 67:III.1227, 1247 and 5727)

The Department of Social Services, Office of Family Support, amended the Administrative Procedure Act, R.S. 49:953(B) in Title 67 Part III, Subpart 2, Family Independence Temporary Assistance Program in Sections 1227 and 1247 and Subpart 16, Strategies to Empower People (STEP) Program, in Section 5727. This Rule is in pursuant to the authority of Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant.

Language was being removed from Section 1227, C and D regarding the inclusion of essential persons in the FITAP grant and FITAP assistance unit to comply with language set forth in Sections 401, 402, 403, and 408 of Title IV of the Social Security Act, which states the first goal of TANF is to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives and further states that no part of the TANF grant shall be used to provide assistance to a family unless the family includes a minor child who resides with the family or a pregnant individual.

Section 1247.E.1-2 restored language concerning the eligibility requirements for cash assistance stated in Title IV of the Social Security Act. Section 5727.B.1-4 restored language that addresses criteria in the Family Transition Assessment (FTA) to assist participants upon their transition from cash assistance. Text in these Sections was erroneously omitted from LR 31:102 and 103 (January 2005) due to incorrect document formatting. Failure to amend the language in Sections 1227, 1247, and 5727 could result in noncompliance with federal regulations and the imposition of penalties and sanctions by the Administration for Children and Families, the federal agency responsible for overseeing Louisiana's TANF Block Grant.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Programs

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1227. Living in the Home of a Qualified Relative

A. - B.5. ...

C. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.2, 42 U.S.C. 608 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 32:264 (February 2006), LR 33:1686 (August 2007).

§1247. Time Limits

A. - D.3. ...

E. Any month for which such assistance was provided will be disregarded from the 24- and 60-month time limits with respect to the individual, if the individual was:

1. a minor child; and

2. not the head of a household or married to the head of a household.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.6 and R.S. 46:460.5(A)(3), Act 58, 2003 Reg. Session; Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 26:349 (February 2000), LR 27:2263 (December 2001), LR 30:494 (March 2004), LR 31:102 (January 2005), LR 33:1686 (August 2007).

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter C. Step Program Process

§5727. Family Transition Assessment

A. ...

B. The FTA shall include but is not limited to:

1. a plan for on-going success in the work force;

2. identification of short and long-term goals;

3. identification of potential barriers and an action plan to overcome these barriers; and

4. information regarding eligibility for supportive services including, but not limited to: Medicaid benefits, food stamp benefits, child care, transportation, Louisiana Child Health Insurance Program, the earned income tax credit, and TANF-funded services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session; Act 110 and Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 31:103 (January 2005), LR 33:1686 (August 2007).

Ann S. Williamson
Secretary

0708#079

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Dove Hunting Zones (LAC 76:V.323)

The Department of Wildlife and Fisheries and Wildlife and Fisheries Commission do hereby establish dove hunting zones.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 3. Wild Birds

§323. Mourning Dove Hunting Zones

A. For the purposes of this Section, the term *dove* refers to the following species, and only the following species:

mourning doves, white-winged doves, Eurasian collared-doves, and ringed-turtle doves.

B. The state shall be divided into North and South Mourning Dove Hunting Zones by the following boundary: Beginning at the Texas-Louisiana border on La. Highway 12; thence east along La. Highway 12 to its intersection with U.S. Highway 190; thence east along U.S. Highway 190 to its intersection with Interstate 12; thence east along Interstate 12 to its intersection with Interstate 10; thence east along Interstate 10 to the Mississippi state line.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:1687 (August 2007).

Bryant O. Hammett, Jr.
Secretary

0708#049

Notices of Intent

NOTICE OF INTENT

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

Seed Stock (LAC 7:XIII.Chapter 3)

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

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

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

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

Title 7

Agriculture and Animals

Part XIII. Seeds

Chapter 3. Adulterated Seed Stock and Other Propagating Stock

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

§301. Planting of Rice Seed Stocks with LL Traits

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

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

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

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

§303. Planting of All Rice Seed Stocks

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§309. Carry-Over Rice Seed Stocks

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

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

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

§311. Stop-Sale

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

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

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

Family Impact Statement

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

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

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

Bob Odom
Commissioner

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

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Skip Rhorer
Assistant Commissioner
0708#025

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Certification of Eligibles

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

The following will be considered at the meeting.

Amend Rule 8.4(e) Certification of Eligibles

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

Explanation

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

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

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

Anne S. Soileau
Director

0708#040

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Continuous State Service

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

The following will be considered at the meeting:

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

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

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

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

Anne S. Soileau
Director

0708#037

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Hiring Rate
Probationary Period

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

The following will be considered at the meeting:

6.5(a) Hiring Rate

Amend Rule 6.5(a)

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

Explanation

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

ADD Rule 9.1(h)

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

Explanation

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

Amend Rule 9.1(a)1

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

Explanation

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

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

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

Anne S. Soileau
Director

0708#038

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Job Appointment

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

The following will be considered at the meeting:

Amend Rule 1.18

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

Proposed Amendment to C.S. Rule 1.18

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

Explanation for Proposed Amendment to C.S. Rule 1.18

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

Proposed Amendment to C.S. Rule 8.14.

8.14(a)

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

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

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

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

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

8.14(c)

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

Explanation for Amendment to Rule 8.14(c)

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

8.14(d)

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

Amend Rule 8.14(g)

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

Explanation for Amendment to Rule 8.14(g)

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

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

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

Anne S. Soileau
Director

0708#039

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State's Accountability System is an evolving system with different components that are required to change in response to state and federal laws and regulations.

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

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

Title 28

EDUCATION

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

§301. School Performance Score Goal

A. - D. ...

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

1. – 2.d. ...

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

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

F. - H.4 ...

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

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

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

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

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

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

J.2a. - L....

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

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

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

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

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

A. ...

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

1. - 1c. ...

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

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

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

A. - B. ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 7. Subgroup Component §707. Safe Harbor

A. - B.2. ...

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

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

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

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

C. - F. ...

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

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

§709. Failing the Subgroup Component

A. ...

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

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

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

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

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

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

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

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

Chapter 9. Growth Labels

§903. Growth Labels

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

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

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

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

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

Chapter 13. Rewards/Recognition

§1301. Reward Eligibility

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

B. ...

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

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

Chapter 16. Academically Unacceptable Schools and Subgroup Component Failure

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

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

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

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

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

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

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

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

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

G. Academically Unacceptable Schools

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

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

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

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

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

§1603. Requirements for Academically Unacceptable Schools

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

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

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

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

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

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

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

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

4. the new SIP must:

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

b. encompass a two-year span;

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

d. follow all guidelines established by the LDE;

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

f. be submitted for approval to the LDE;

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

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

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

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

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

a. replace school staff;

b. implement new curriculum;

c. decrease management authority;

d. contract an outside expert;

e. extend the school year or school day;

f. restructure;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§1605. Entry and Exit from Subgroup Component Failure

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

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

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

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

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

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

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

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

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

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

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

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

F. Subgroup Component Failure

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

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

I. All schools entering CA1 must:

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

I. All schools entering CA2 must;

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

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

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

§1609. Order of Priority for Remedies

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

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

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

10. SII

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

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

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

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

§1901. District Level Tasks

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

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

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

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

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

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

3. offer supplemental educational services for Title I schools;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§2101. State Support at Each Level

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

1 - 7. ...

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

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

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

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

12. SBESE shall approve or disapprove alternate governance plans;

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

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

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

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

Chapter 23. Reconstitution/Alternate Governance Plans

§2301. Schools Requiring Reconstitution/Alternate Governance Plans

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

1. Reconstitution Plan: AUS schools.

a. - c. ...

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

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

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

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

Chapter 24. Recovery School District

§2401. Recovery School District

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

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

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

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

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

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

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

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

Chapter 25. School Choice

§2501. Schools Requiring Choice

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

1. academically unacceptable;

2. Title I schools that:

a. have failed the subgroup component for one year;

b. must implement remedies for subgroup

component failure.

B. - C. 2. ...

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

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

§2503. Student Eligibility

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

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

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

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

§2505. Transfer Options

A. - B.2. ...

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

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

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

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

Chapter 27. Supplemental Educational Services

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

Chapter 33. New Schools and/or Significantly Reconfigured Schools

§3301. Inclusion of New Schools

A. ...

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

C. ...

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

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

§3303. Reconfigured Schools

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

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

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

Chapter 35. Inclusion of Alternative Education Students

§3503. Option I

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

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

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

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

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

§3507. Option Considerations

A. - B.1. ...

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

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

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

Chapter 37. Inclusion of Lab Schools and Charter Schools

§3701. Special Consideration of Lab and Charter Schools

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

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

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

Chapter 39. Inclusion of Students with Disabilities

§3905. Inclusion of Alternate Assessment Results

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

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

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

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

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

Family Impact Statement

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0708#060

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2321.Carnegie Credit for Middle School Students. The elimination of §2321.E is necessary due to changes in the High Stakes policy approved when the passing score for the eighth grade LEAP changed to the Basic/Approaching Basic combination. The revision of §2321.F would allow students who are repeating the eighth grade due to failure of the math and/or English language arts components of LEAP to earn high school credit. The policy does not allow the students to earn high school credit in the content area they failed on LEAP.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2321. Carnegie Credit for Middle School Students

A. - D. ...

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

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

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

Family Impact Statement

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, to: Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators Carnegie Credit for Middle School Students**

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

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0708#063

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2319. High School

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

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

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

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

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

§2319. High School Graduation Requirements

A. Standard Diploma

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Minimum Course Requirements for High School Graduation

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

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

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

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

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

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

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

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

F. High School Area of Concentration

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

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

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

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

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

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

G. Academic Endorsement

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

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

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

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

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

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

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

c. Students shall complete one of the following requirements:

i. Senior Project;

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

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

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

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

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

H. Career/Technical Endorsement

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

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

b. Students shall complete the career area of concentration.

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

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

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

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

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

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

e. Students shall achieve a minimum GPA of 2.5.

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

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

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

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

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

§2341. English

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

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

C. The English course offerings shall be as follows:

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

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

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

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

§2353. Mathematics

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

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

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

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

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

1. Algebra I (1 unit); or

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

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

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

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

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

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

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

F. The Mathematics course offerings shall be as follows:

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

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

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

§2361. Science

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

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

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

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

D. The Science course offerings shall be as follows:

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

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

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

§2363. Social Studies

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

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

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

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

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

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

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

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

Family Impact Statement

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 741—Louisiana Handbook for
School Administrators—Curriculum and Instruction**

**Title 28
EDUCATION**

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

Chapter 11. Student Services

§1145. School Health Forms

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

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

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

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

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

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

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

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

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

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

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

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

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

Family Impact Statement

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

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

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

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

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

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

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

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

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

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

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Secretary
Management and Finance
0708#061

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

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

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

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

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

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

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

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

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

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

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

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators—School Health Forms**

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

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

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

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

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

There will be no estimated effect on revenue collection of state or local governmental units.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0708#062

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 996—Standards for Approval of Teacher Education Programs*: §205. Application for Second-Stage Approval and §207. Notification of Intent to Seek Full State Approval and/or Accreditation by the National Council for the Accreditation of Teacher Education (NCATE). The proposed language clarifies the process of moving from second-stage approval to national accreditation or state approval by new or reinstated public and private teacher preparation units.

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

§205. Application for Second-Stage Approval

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Family Impact Statement

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., October 9, 2007, to: Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 996—Standards for Approval of Teacher Education Programs

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

The policy revises Bulletin 996, *Standards for Approval of Teacher Education Programs*, Chapter 2, regarding policy guidelines for preliminary approval and second-stage approval of new or reinstated public and private teacher preparation units. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0708#064

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

**Title 28
EDUCATION**

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

**Chapter 1. Student Financial Assistance Commission
Bylaws**

§101. Definitions and Authority

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

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

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

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

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

§105. Officers of the Commission and Executive Staff

A.1. - B. ...

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

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

D. ...

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

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

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

A. Executive Staff of the Commission

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

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

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

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

E. Directors of Divisions

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

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

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

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

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

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

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

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

Interested persons may submit written comments on the proposed changes (SG0886NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bylaws—Committee Membership

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Badge Eldredge
General Counsel
0708#017

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

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

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

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

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

Family Impact Statement

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

Interested persons may submit written comments on the proposed changes (SG0890NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Scholarship/Grant Programs—Dual Enrollment

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Badge Eldredge
General Counsel
0708#012

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

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

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

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

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

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

Family Impact Statement

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

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

Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

RULE TITLE: Scholarship/Grant Programs

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Badge Eldredge
General Counsel
0708#015

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

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

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

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

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

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

Family Impact Statement

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

Interested persons may submit written comments on the proposed changes (SG0889NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Scholarship/Grant Programs Louisiana Go Grants

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Badge Eldredge
General Counsel
0708#014

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Tuition Trust Authority Office of Student Financial Assistance

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

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

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

Title 28 EDUCATION

Part VII. Tuition Trust Authority

Chapter 1. Bylaws

§101. Definitions and Authority

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

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

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

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:1653 (December 1997), amended LR 26:2269 (October 2000), LR 33:444 (March 2007), LR 33:

§105. Officers of the Authority and Executive Staff

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

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

- C.2. - D. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:1654 (December 1997), amended LR 33:

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

- A. Executive Staff of the Authority

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

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

B. - B.6. ...

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

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

E. Delegation of Authority

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

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

F. Directors of Divisions

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:1656 (December 1997), amended LR 25:1092 (June 1999), LR 33:444 (March 2007), LR 33:

Interested persons may submit written comments on the proposed changes (ST0887NI) until 4:30 p.m., September 10, 2007, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Badge Eldredge
General Counsel
0708#018

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

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

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

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

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

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

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

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

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

Chapter 23. Definitions and General LPDES Program Requirements

§2315. Exclusions

A. The following activities do not require LPDES permits:

1. - 6. ...

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

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

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

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

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

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

Chapter 25. Permit Application and Special LPDES Program Requirements

§2501. Application for a Permit

A. - Q.15. ...

R. Applications for Facilities with Cooling Water Intake Structures

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

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

b. ...

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

3. - 3.e....

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

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

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

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

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

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

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

C. - S. ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§4735. What special definitions apply to this Subchapter?

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

* * *

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

* * *

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

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

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

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

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

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

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

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

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

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

§4763. Who is subject to this Subchapter?

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

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

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

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

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

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

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

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

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

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

§4765. When must I comply with this Subchapter?

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

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

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

§4767. What special definitions apply to this Subchapter?

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

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

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

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

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

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

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

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

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

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

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

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

A. Applicability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§4771. May alternative requirements be authorized?

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

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

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

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

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

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

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

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

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

A. General Application Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

b. if required to install design and construction technologies and/or operational measures in accordance with

LAC 33:IX.4769.B.5 or 6, a plan explaining the technologies and measures you have selected. (Examples of appropriate technologies include, but are not limited to, increased opening to cooling water intake structure to decrease design intake velocity, wedgewire screens, fixed screens, velocity caps, location of cooling water intake opening in water body, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information, if applicable:

- i. a narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that you will use to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;
- ii. to demonstrate compliance with LAC 33:IX.4769.B.6, if applicable, a narrative description of the design and operation of the design and construction technologies that you will use to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and
- iii. design calculations, drawings, and estimates to support the descriptions provided in Clauses B.3.b.i and ii of this Section.

C. Track II Application Requirements. If you are a fixed facility and have chosen to comply with the requirements of Track II in LAC 33:IX.4769.C, you must collect and submit to the administrative authority the following information.

1. Source Water Body Flow Information. If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements in LAC 33:IX.4769.C.2.

2. Track II Comprehensive Demonstration Study. You must perform and submit the results of a comprehensive demonstration study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and confirm that the technology(ies) proposed and/or implemented at your cooling water intake structure reduces the impacts to fish and shellfish to levels comparable to those you would achieve were you to implement the applicable requirements in LAC 33:IX.4769.B.

a. To meet the comparable-level requirement, you must demonstrate that:

- i. you have reduced impingement mortality of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through the applicable requirements in LAC 33:IX.4769.B.3; and
- ii. if you are a facility without sea chests, you have minimized entrainment of entrainable life stages of fish and shellfish to 90 percent or greater of the reduction that would have been achieved through the applicable requirements in LAC 33:IX.4769.B.6.

b. You must develop and submit a plan to the administrative authority containing a proposal for how

information will be collected to support the study. The plan must include:

- i. a description of the proposed and/or implemented technology(ies) to be evaluated in the study;
- ii. a list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If you propose to rely on existing source water body data, the data must be no more than 5 years old, you must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement mortality and (if applicable) entrainment impacts, and you must provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;
- iii. any public participation or consultation with federal or state agencies undertaken in developing the plan; and

iv. a sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond), taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish), and sampling and data analysis methods.

c. You must submit documentation of the results of the study to the administrative authority. Documentation of the results of the study must include the following information.

i. Source Water Biological Study. The source water biological study must include:

(a) a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources, a determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment), and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding, and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(b) an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(c) a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

ii. Evaluation of Potential Cooling Water Intake Structure Effects. This evaluation must include:

(a) calculations of the reduction in impingement mortality and (if applicable) entrainment of all life stages of

fish and shellfish that would need to be achieved by the technologies you have selected to implement to meet requirements under Track II. To do this, you must determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements in LAC 33:IX.4769.B.3 and, for facilities without sea chests, LAC 33:IX.4769.B.6 of Track I at your site;

(b). an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. You must demonstrate that the technologies reduce impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish to a comparable level to that which you would achieve were you to implement the requirements in LAC 33:IX.4769.B.3 and, for facilities without sea chests, LAC 33:IX.4769.B.6 of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and (if applicable) entrainment based on the results of the source water biological study conducted in accordance with Clause C.2.c.i of this Section. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

iii. Verification Monitoring Plan. You must include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies and/or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement mortality and (if applicable) entrainment to the level documented in Clause C.2.c.i of this Section. The plan must describe the frequency of monitoring and the parameters to be monitored. The administrative authority will use the verification monitoring to confirm that you are meeting the level of impingement mortality and entrainment reduction required in LAC 33:IX.4769.C and that the operation of the technology has been optimized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§4775. As an owner or operator of a new offshore oil and gas extraction facility, must I perform monitoring?

A. As an owner or operator of a new offshore oil and gas extraction facility, you will be required to perform monitoring to demonstrate your compliance with the requirements specified in LAC 33:IX.4769 or alternative requirements in LAC 33:IX.4771.

B. Biological Monitoring

1. Facility Requirements

a. Fixed facilities without sea chests that choose to comply with the Track I requirements in LAC 33:IX.4769.B.1 must monitor for entrainment. These facilities are not required to monitor for impingement, unless the administrative authority determines that the information

would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

b. Fixed facilities with sea chests that choose to comply with the Track I requirements LAC 33:IX.4769.B.1 are not required to perform biological monitoring unless the administrative authority determines that the information would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

c. Facilities that are not fixed facilities are not required to perform biological monitoring unless the administrative authority determines that the information would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

d. Fixed facilities with sea chests that choose to comply with the Track II requirements in LAC 33:IX.4769.C must monitor for impingement only. Fixed facilities without sea chests that choose to comply with Track II requirements must monitor for both impingement and entrainment.

2. Monitoring must characterize the impingement rates and (if applicable) entrainment rates of commercial, recreational, and forage base fish and shellfish species identified in the source water baseline biological characterization data required by LAC 33:IX.2501.R.4, identified in the comprehensive demonstration study required by LAC 33:IX.4773.C.2, or as specified by the administrative authority.

3. The monitoring methods used must be consistent with those used for the source water baseline biological characterization data required in LAC 33:IX.2501.R.4, those used by the comprehensive demonstration study required by LAC 33:IX.4773.C.2, or as specified by the administrative authority. You must follow the monitoring frequencies in Paragraphs B.4 and 5 of this Section for at least two years after the initial permit issuance. After that time, the administrative authority may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any seasonal variations in the species and numbers of individuals of those species that are impinged or entrained.

4. Impingement Sampling. You must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

5. Entrainment Sampling. If your facility is subject to the requirements of LAC 33:IX.4769.B.1.a, or if your facility is subject to LAC 33:IX.4769.C and is a fixed facility without a sea chest, you must collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the source water baseline biological characterization required by LAC 33:IX.2501.R.4 or the comprehensive demonstration study required in LAC 33:IX.4773.C.2. You must collect

samples only when the cooling water intake structure is in operation.

C. Velocity Monitoring. If your facility uses a surface intake screen system, you must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in LAC 33:IX.4769.B.3. If your facility uses devices other than surface intake screens, you must monitor velocity at the point of entry through the device. You must monitor head loss or velocity during initial facility startup and, thereafter, at the frequency specified in your LPDES permit, but no less than once per quarter.

D. Visual or Remote Inspections. You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct visual inspections at least weekly to ensure that any design and construction technologies required in LAC 33:IX.4769.B.5, B.6, C, and/or D are maintained and operated to ensure that they will continue to function as designed. Alternatively, you must inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§4777. As an owner or operator of a new offshore oil and gas extraction facility, must I keep records and report?

A. As an owner or operator of a new offshore oil and gas extraction facility you are required to keep records and report information and data to the administrative authority as follows.

1. You must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under LAC 33:IX.4773, and any compliance monitoring data submitted under LAC 33:IX.4775, for a period of at least three years from the date of permit issuance. The administrative authority may require that these records be kept for a longer period.

2. You must provide the following to the administrative authority in a yearly status report:

a. for fixed facilities, biological monitoring records for each cooling water intake structure as required by LAC 33:IX.4775.B;

b. velocity and head loss monitoring records for each cooling water intake structure as required by LAC 33:IX.4775.C; and

c. records of visual or remote inspections as required in LAC 33:IX.4775.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§4779. What must the administrative authority do to comply with the requirements of this Subchapter?

A. Permit Application. The administrative authority must review materials submitted by the applicant in accordance with LAC 33:IX.2501.R, 4771, and 4773 at the time of the initial permit application and before each permit renewal or reissuance.

1. After receiving the initial permit application from the owner or operator of a new offshore oil and gas extraction facility, the administrative authority must determine applicable standards in LAC 33:IX.4769 or 4771 to apply to the new offshore oil and gas extraction facility. In addition, the administrative authority must review materials to determine compliance with the applicable standards.

2. For each subsequent permit renewal, the administrative authority must review the application materials and monitoring data to determine whether requirements, or additional requirements, for design and construction technologies or operational measures should be included in the permit.

3. For Track II facilities, the administrative authority must review the information collection proposal plan required by LAC 33:IX.4773.C.2.b. The facility may initiate sampling and data collection activities prior to receiving comment from the administrative authority.

B. Permitting Requirements. Section 316(b) requirements of the CWA are implemented for a facility through an LPDES permit. The administrative authority must determine, based on the information submitted by the new offshore oil and gas extraction facility in its permit application, the appropriate requirements and conditions to include in the permit based on the track (Track I or Track II), or alternative requirements in accordance with LAC 33:IX.4771, the new offshore oil and gas extraction facility has chosen to comply with. The following requirements must be included in each permit.

1. Cooling Water Intake Structure Requirements. At a minimum, the permit conditions must include the performance standards that implement the applicable requirements of LAC 33:IX.4769.B.3-6 and C.1 and 2 or LAC 33:IX.4771.

a. For a facility that chooses Track I, the administrative authority must review the design and construction technology plan required in LAC 33:IX.4773.B.3 to evaluate the suitability and feasibility of the technology proposed to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish. In the first permit issued, the administrative authority must include a condition requiring the facility to reduce impingement mortality and/or entrainment commensurate with the implementation of the technologies in the permit. Under subsequent permits, the administrative authority must review the performance of the technologies implemented and require additional or different design and construction technologies, if needed, to minimize impingement mortality and/or entrainment of all life stages of fish and shellfish. In addition, the administrative authority must consider whether more stringent conditions are reasonably necessary in accordance with LAC 33:IX.4769.D.

b. For a fixed facility that chooses Track II, the administrative authority must review the information submitted with the comprehensive demonstration study required in LAC 33:IX.4773.C.2 and evaluate the suitability of the proposed design and construction technology and/or operational measures to determine whether they will reduce both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that could be achieved through Track I. In addition, the administrative authority must review the verification monitoring plan required in LAC 33:IX.4773.C.2.c.iii and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies and operational measures meet the requirements in LAC 33:IX.4769.C.1. Under subsequent permits, the administrative authority must review the performance of the additional and/or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of LAC 33:IX.4769.B.3 and, if applicable, LAC 33:IX.4769.B.6.

c. If a facility requests alternative requirements in accordance with LAC 33:IX.4771, the administrative authority must determine if data specific to the facility meet the requirements in LAC 33:IX.4771.A and include requirements in the permit that are no less stringent than justified by the wholly-out-of-proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets.

2. Monitoring Conditions. At a minimum, the permit must require the permittee to perform the monitoring required in LAC 33:IX.4775. The administrative authority may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The administrative authority may require continued monitoring based on the results of monitoring done pursuant to the verification monitoring plan required in LAC 33:IX.4773.C.2.c.iii.

3. Recordkeeping and Reporting. At a minimum, the permit must require the permittee to report and keep records as required by LAC 33:IX.4777.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on September 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ071ft. Such

comments must be received no later than September 26, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ071ft. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

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NOTICE OF INTENT

Office of the Governor Board of Examiners of Certified Shorthand Reporters

Continuing Education (LAC 46:XXI.601-613, and 1301)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq. Notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters, proposes to adopt changes made to the continuing education Rule and to add a paragraph to the code of ethics Rule.

The proposed Rules are to become effective when approved.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 6. Continuing Education

§601. Continuing Education Requirement

A. The maintenance and continued validity of any license issued by the board shall be dependent upon the satisfactory performance and completion of those continuing education requirements as established and enforced herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:32 (January 1991), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

§603. Continuing Education Credits

A. Beginning January 1, 1991, and thereafter, each certificate holder shall be required to obtain at least 12 continuing education credits during each two-year continuing education cycle. Each continuing education cycle shall consist of two consecutive years beginning January 1 of the odd-numbered year and ending December 31 of the even-numbered year, inclusive. The board shall award one

continuing education credit for each half hour of instruction time.

B. Any certificate holder is exempt from the requirement of obtaining continuing education credits for the calendar year in which the certification is initially issued. If the certificate holder is certified in an odd-numbered year, the certificate holder shall be required to obtain at least six continuing education credits during the calendar year following the year in which the certification was issued. If the certificate holder is certified in an even-numbered year, the certificate holder shall be required to obtain at least 12 continuing education credits during the two calendar years following the year in which the certification was issued.

C. Any certificate holder who is or who becomes age 65 or older during a continuing education cycle is exempt from the requirement of obtaining continuing education credits.

D. The board may suspend or revoke the certification of any certificate holder who fails to satisfy and complete the continuing education requirements stated herein, pursuant to R.S. 37:2557.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:32 (January 1991), amended LR 20:412 (April 1994), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

§605. Prohibited Excess Credits

A. Any continuing education credit obtained in excess of 12 credits per reporting period shall not be applied to any subsequent or future continuing education reporting period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

§607. Maintenance of Record

A. Each certificate holder shall maintain a record of the satisfaction and completion of the continuing education credits required by the board.

B. On or before January 31 of each odd-numbered calendar year, each reporter issued a certificate by the board shall submit or cause to be submitted to the board a written record of continuing education credits earned by the reporter for the preceding two calendar years.

C. A certificate holder who teaches a course in which court reporters receive continuing education credit may receive three continuing education credits for each continuing education credit awarded to a reporter enrolled in the course. In order to receive credit for teaching activities, the certificate holder must submit to the continuing education committee the following: a copy of any promotional material or curriculum distributed to attendees, describing the course content; verification that the course was approved for continuing education credit in Louisiana; and a signed statement from the certificate holder attesting to the date and duration of training conducted by the certificate holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 17:578 (June 1991), LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

§609. Continuing Education Guidelines

A. The following general subject matter and enumerated continuing education credits may be approved by the board or, at the board's direction, by the continuing education committee, in the event the subject matter is germane to the professional competence of the certificate holder.

1. The board may approve seminars and workshops sponsored by the National Court Reporters Association (NCRA) or the National Verbatim Reporters Association (NVRA) at national, regional, state, or local meetings, by public institutions of higher learning, and by judicial organizations, including the following subjects:

- a. English;
- b. medical;
- c. legal;
- d. technical subjects presented by experts dealing with terminology and concepts encountered by the certificate holder during depositions and at trials;
- e. new developments and knowledge in the field directly related to making the record;
- f. general court and deposition procedures;
- g. general court and deposition transcript preparation;
- h. financial planning and administration;
- i. professionalism;
- j. office procedures and record-keeping
- k. ethics; or
- l. technology related to new developments in the field of court reporting.

2. The board may approve continuing education credit for courses conducted by universities and colleges. A certificate holder who has enrolled in an accredited university or college and has successfully completed an academic or technical course, the subject matter of which is consistent with §609(A)(1)(a-l) above, and who received a passing grade of C or better shall receive four C.E. credits per academic hour.

3. The board may recognize credits from other institutions and organizations giving continuing education courses if the course concerns subject matter directly related to enhancing the certificate holder's knowledge, ability, or competence to perform reporting duties.

4. The board may award 12 credits for the two-year C.E. cycle within which a certificate holder attains certification for the first time from a national association as follows:

- a. NCRA Registered Professional Reporter (RPR), Registered Merit Reporter (RMR), or Certified Realtime Reporter (CRR) certification; or
- b. NVRA Certified Verbatim Reporter (CVR), Certificate of Merit (CM), or Real-time Verbatim Reporter (RVR) certification.

B. A certificate holder will not receive C.E. credit unless the seminar, workshop, course, or other activity has been

approved by the board or, at the board's direction, by the continuing education committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

§611. Activities Not Acceptable for Continuing Education Credits

A. Completion of any certified pulmonary respiratory course will not be accepted for continuing education credits.

B. Attendance at or participation in tours, exhibits, entertainment, recreation, committee service, association business, home study, or on-line courses or seminars will not be accepted for continuing education credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 21:931 (September 1995), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

§613. Provider Application Process

A. A provider must submit the following information to the continuing education committee at least 90 days before the date of a proposed training event:

1. The date, time, and place where the training will be conducted;

2. A list and detailed description or agenda of the courses that will be taught, identifying for each course the number of minutes allocated to instruction time and the number of credit hours requested;

3. A description of the provider's experience and qualifications to conduct such training;

4. A description of the registration and course attendance procedures that will be used by the provider;

5. A copy of the evaluation form that will be distributed to participants at the end of the training to solicit their assessment of the program's educational value and effectiveness;

6. A copy of the provider verification form that will be given to each participant upon completion of the training, indicating the courses completed and credit hours awarded to that participant;

7. The names and qualifications of instructors, identifying which courses they will be teaching in the training; and

8. A signed statement from the provider agreeing to submit to the continuing education committee within 15 days after the training a list of certificate holders who attended all or a portion of the training event and the number of credit hours for which each is eligible, as well as a summary of the evaluation responses completed by participants in the training.

B. The continuing education committee will respond within 30 days after receiving a completed provider application, approving or denying continuing education credit for courses in the proposed training event. The committee may request further information or clarification

from the provider and may extend the 30-day period by the additional days required to receive and consider a response from the provider.

C. A provider may advertise the training as eligible for continuing education credit in Louisiana only after receiving approval from the continuing education committee.

D. Within 15 days after completion of the training, a provider must submit the following information to the continuing education committee:

1. A list of participants in the training, the courses each participant attended, and the credit hours awarded to each participant;

2. A summary of the evaluation forms completed by participants; and

3. A description of any problems encountered or complaints received during the training and the provider's plan for responding to such problems or complaints in this or any future training.

E. A provider who fails to comply with any continuing education requirements or commitments may be rendered ineligible to conduct training in Louisiana upon motion of the continuing education committee and approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

Chapter 13. Code of Ethics

§1301. Guidelines for Professional Practice

A. - B.10. ...

C. When a deposition is taken, an original transcript must be produced by the reporter in a prompt manner and delivered to the noticing attorney, in satisfaction of the attorney's duty to serve as custodian of the records and in order to assure full compliance with the reporter's statutory and ethical obligations.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2553(A.),37:2554 and 37:2557(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 25:1215 (July 1999), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:

Family Impact Statement

The proposed Rule changes have no known impact on family formation, stability, and autonomy as described in R. S. 49:972.

A public hearing will be held on August 24, 2007, from 11 a.m. to 1 p.m. in the State National Life Building, 263 Third Street, Third Floor Conference Room, Baton Rouge, LA 70801. Interested persons are invited to attend and submit oral comments on the proposed amendments.

Interested persons may submit comments in writing, to Phyllis Pool, Louisiana Board of Examiners of Certified Shorthand Reporters, P.O. Box 3257, Baton Rouge, LA 70821-3257.

Judge Guy P. Holdridge,
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Continuing Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in any implementation costs (or savings) to state or local governmental units other than those one-time costs directly associated with the publication of these rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units associated with the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will benefit those persons 65 and older who will no longer have to obtain continuing education credits to maintain their license. On the other hand, there may be additional costs to out-of-state providers in regard to the provider application process.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will likely result in a greater number of experienced reporters maintaining a current license.

Guy P. Holdridge,
Chairman
0708#055

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

Louisiana Building Code (LAC 34:III.131)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of RS 39:121, the Division of Administration, Facility Planning and Control hereby gives notice of its intent to amend Title 34, Government Contracts, Procurement and Property Control, Part III. Facility Planning and Control, Chapter 1. Capital Improvement Projects to add Section 131, Louisiana Building Code for State Owned Buildings. These changes are the result of a review by Facility Planning and Control of the editions of the codes specified by RS 40:1722 and the most recent editions of these codes. This review has led to the determination that new editions of these codes will provide a higher standard than the currently referenced editions. Facility Planning and Control is, therefore, establishing the appropriate editions of these codes as the standards.

Title 34

**GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY CONTROL**

Part III. Facility Planning and Control

Chapter 1. Capital Improvement Projects

Sub Chapter A. Procedure Manual

§131. Louisiana Building Code

A. RS 40:1277 establishes the Louisiana Building Code and directs that the following codes be established as the standards as minimum standards for this code. These codes shall be established as constituting the code in the editions indicated:

1. the Life Safety Code, Standard 101, 2003 Edition as published by the National Fire Protection Association;
2. Part XIV (Plumbing) of the State Sanitary Code as promulgated by the secretary of the Department of Health and Hospitals;
3. the International Building Code, 2006 Edition as published by the International Code Council;
4. the International Mechanical Code, 2006 Edition as published by the International Code Council;
5. the National Electric Code (NFPA No. 70) 2005 Edition as published by the National Fire Protection Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 33:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the Stability of the Family.
2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.
4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earnings and family budget.
5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.
6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit comments to William Morrison, Facility Planning and Control, P.O. Box 94095,

Baton Rouge, LA 70804-9095. Written comments will be accepted through September 10, 2007.

Jerry Jones
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Building Code**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The proposed rule change will likely result in increased construction costs to the state which will likely range from \$1,000 to \$100,000 per project. Implementation of the new building code requires increased wind load and flood resistance that will increase the structural strength of the building and will typically result in an increase in costs. Maximum anticipated wind speed and flood potential vary across the state, consequently necessary structural improvements will vary depending on the location of the project.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule change will have no impact on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Increased workloads related to new building codes will likely result in increased fees for both designers and contractors. Increased fees will vary depending on each individual project.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule change will have no impact on competition and employment.

Jerry W. Jones
Director
0708#056

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

**NOTICE OF INTENT
Office of the Governor
Motor Vehicle Commission**

Advertising (LAC 46:V.Chapter 7)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 6, the Office of the Governor, Louisiana Motor Vehicle Commission, notice is hereby given that the Louisiana Motor Vehicle Commission proposes to repeal Chapter 7 and replace it with new regulations and language to clarify the Rule, put into the Rule customary procedures of the commission to assist its licensees in designing their advertising programs.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part V. Automotive Industry

Subpart 1. Motor Vehicle Commission

Chapter 7. Advertising

§701. Advertising; Dealer Name

A. Dealers may advertise only under the name that appears on their franchise agreement and dealer license issued by the Motor Vehicle Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§703. General Prohibition

A. A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§705. Specific Rules

A. The violation of an advertising rule shall be considered by the commission as a prima facie violation of the Louisiana Motor Vehicle Commission Law. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the commission to be false, deceptive, or misleading shall be deemed violations of the Louisiana Motor Vehicle Commission Law, and shall also be considered violations of the general prohibition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§707. Definitions

Abbreviations—using shortened terms for words or initials for groups of words. Commonly understood abbreviations, such as " '2DR' ", " 'AM/FM' ", " 'APR' ", " 'WAC' ", " 'DEMO' ", " 'EXEC' ", " 'DOC FEE' ", may be used. Trade industry abbreviations which are not commonly understood, such as " 'FTB' ", " 'A/R' ", " 'TOP' ", " 'POF' ", " 'DOC' " MAY NOT be used. This rule does not contain a list of all the abbreviations one may not use.

Advertisement—an oral, written, telecommunicated, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, letter, flyer, price tag, window sticker, banners, billboards, handbills, or on radio, the Internet, or via on-line computer service, or on television or on-hold messaging, any medium.

Bait Advertisement—an alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain leads to persons interested in buying or leasing merchandise

of the type advertised and to switch consumers from buying or leasing the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

Balloon Payment—any scheduled payment required by a consumer credit sale or consumer loan that is more than twice as large as the average of all prior scheduled payments except the down payment.

Dealership Addendum—a form which is to be displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer.

1. The addendum is to disclose:
 - a. that it is supplemental;
 - b. any added feature, service, equipment, part, or accessory charged and added by the dealership and the retail price therefore;
 - c. any additional charge to the manufacturer's suggested retail price (MSRP) such as additional dealership markup; and
 - d. the total dealer retail price.

2. The dealership addendum form shall not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.

Demonstrator—a new motor vehicle that is currently in the inventory of the automobile dealership and used or has been used primarily for test drives by customers and other dealership purposes and so designated by the dealership. Demonstrators may be advertised for sale as such only by an authorized dealer in the same make of motor vehicle.

Disclaimer—those words or phrases used to provide a clear understanding of any advertised statement, but not used to contradict or change the meaning of the statement.

Disclosure—a clear and conspicuous statement made in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. The disclosure may not contradict or be inconsistent with any other information with which it is presented. If the disclosure modifies, explains, or clarifies other information with which it is presented, or states "see dealership for details," then it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner.

1. An audio disclosure must be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it.
2. A visual disclosure for television must appear on the screen for a duration sufficient for a consumer to read and comprehend it.
3. In a print or internet advertisement or promotional material, including without limitation point of sale display or brochure materials directed to consumers, a disclosure must be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears. For purposes of these rules, qualifying terms and phrases will be

considered to be clearly, conspicuously and accurately set forth if they are:

- a. in bold print and type of such size that is capable of being read without unreasonable extra effort;
- b. expressed in terms that are understandable to the buying public; and
- c. in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

Factory Executive/Official Vehicle—a new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor or their subsidiaries.

Internet—a system that connects computers or computer network.

Licensee—any person required to obtain a license from the Louisiana Motor Vehicle Commission.

Manufacturer's Label—the label required by the Automobile Information Disclosure Act, 15 U.S.C. 1231-1233, to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to the dealer.

Program Vehicle—used vehicle that is purchased at a manufacturer's closed auction or sold by or directly from the manufacturer or distributor which is current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

Rebate or Cash Back—a sum of money refunded to a purchaser for the benefit by the manufacturer or distributor after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to himself or for his benefit subsequent to payment in full.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§709. Availability of Vehicles

A. A licensee may advertise a specific vehicle or line-make of vehicles for sale if:

1. the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is clearly and conspicuously disclosed in the advertisement; and

2. the price advertisement sets forth the number of vehicles available at the time the advertisement is placed or a dealer can show he has available a reasonable expectable public demand based on prior experience. In addition, if an advertisement pertains to only one specific vehicle, then the advertisement must also disclose the vehicle's stock number or vehicle identification number.

B. Motor vehicle dealers may advertise a specific used vehicle or vehicles for sale if:

1. the specific used vehicle or vehicles is in the possession of the dealer at the time the advertisement is placed; and
2. the title certificate to the used vehicle has been assigned to the dealer.

C. This Section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§711. Accuracy

A. All advertised statements shall be accurate, clear and conspicuous.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§713. Untrue Claims

A. The following statements are prohibited, list not exclusive:

1. statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own motor vehicle" or statements with similar meaning;

2.a. statements such as "everybody financed", "no credit rejected", "we finance anyone", "guaranteed approval", and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit;

b. statements such as "all credit applications accepted", or terms with similar meaning are deemed deceptive and shall not be used;

3. statements representing that no other person grants greater allowances for trade-ins, however stated, unless such is the case;

4. statements representing that because of its large sales volume a person is able to purchase vehicles for less than another person selling the same make of vehicles. Statements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet," and "factory wholesale outlet," shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used;

5. "double rebates," "triple rebates" or any other amount of rebates that are not truly offered by the manufacturer are prohibited;

6. specific claims or discount offers shall not be used in connection with any motor vehicle other than new or a demonstrator and then only to show the difference between the dealer's own current selling price and the bona fide manufacturer's suggested list price, if an automobile, or manufacturer's suggested retail price, if a truck. Full explanation must be given, as for example, "save or discount \$ from manufacturer's list/retail price." Such statements as "up to," "as much as," "from"-to," etc., shall not be used in connection with savings claims;

7. any claims such as "first", "largest" and/or "biggest" may be advertised only when the licensee is the "first", "largest" and/or "biggest" in retail sales for a calendar year. The claim of "first", "largest" and/or "biggest" must be qualified as to validity (using valid source data) and the time

period of the claim with all qualifying language to be in the same size print as the claim. Additionally, the advertisement of the claim may only be utilized for the following calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§715. Layout

A. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered for sale or lease at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualification shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§717. Manufacturer's Suggested Retail Price

A. The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, state and local taxes, title, and license fees may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded. With respect to advertisements placed with local media in Louisiana by a manufacturer or distributor which includes the names of the local dealers of the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only state and local taxes, license, and title fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§719. Dealer Price Advertising

A. The featured price of a new or used motor vehicle, when advertised, must be the full cash price for which the vehicle will be sold to any and all members of the buying public. The only charges that may be excluded from the advertised price are:

1. state and local taxes;
2. license;
3. title; and
4. notarial fees, convenience fees and documentary fees.

B. A qualification may not be used when advertising the price of a vehicle such as "with trade", "with acceptable trade", "with dealer-arranged financing", "rebate assigned to dealer" or "with down payment".

C. If a price advertisement of a new motor vehicle discloses a rebate, cash back, discount savings claim, or other incentive, the full cash price of the vehicle must be

disclosed as well as the price of the vehicle after deducting the incentive. The following is an acceptable format for advertising a price with rebates and other deductions:

Mfg. Sugg. Retail Price	\$9,995
less rebate	\$ 500
less dealer discount	\$ 500
Sale Price	\$8,995

D. If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in Subsection C first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format:

Mfg. Sugg. Retail Price	\$9,995
less rebate	\$ 500
less dealer discount	\$ 500
Sale Price	\$8,995
First Time Buyer's Receive Additional \$500 Off	

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§721. Identification

A. When the price of a vehicle is advertised, the following must be disclosed:

1. model year;
2. make;
3. model line and style or model designation; and
4. whether the vehicle is a used, demonstrator, or a factory executive/official vehicle.

B. Expressions such as "fully equipped", "factory equipped", "loaded", and other such terms shall not be used in any advertisement that contains the price of a vehicle unless the optional equipment of the vehicle is listed in the advertisement.

C. An illustration of a motor vehicle used in an advertisement must be substantially the same as that of the motor vehicle advertised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§723. Advertising at Cost or Invoice

A. No advertisement shall be run which uses the term or terms "invoice"; "cost"; "percent over/under cost, invoice or profit"; "\$\$\$ over/under cost, invoice or profit".

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§725. Trade-In Allowances

A. No guaranteed trade-in amount or range of amounts shall be featured in advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§727. Used Vehicles

A. A used vehicle shall not be advertised in any manner that creates the impression that it is new. A used vehicle shall be identified as either "used" or "pre-owned". Terms such as program car, special purchase, factory repurchase, certified or other similar terms are not sufficient to designate a

vehicle as used, and these vehicles must also be identified as "used" or "pre-owned".

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§729. Demonstrators, Factory Executive/Official Vehicles

A. If a demonstrator or factory executive/official vehicle is advertised, the advertisement must clearly and conspicuously identify the vehicle as a demonstrator or factory executive/official vehicle. A demonstrator or factory executive/official vehicle may be sold only by a dealer franchised and licensed to sell that line-make of new motor vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§731. Auction

A. Terms such as "auction" or "auction special" and other terms of similar import shall be used only in connection with a vehicle offered or sold at a bona fide auction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§733. Free Offers

A. No merchandise or enticement may be described as "free" if the vehicle can be purchased or leased for a lesser price without the merchandise or enticement of if the price of the vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement. The advertisement shall clearly and conspicuously disclose the conditions under which the "free" offer may be obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§735. Cash Offers

A. Any cash offer or anything that is convertible to cash funded by the dealer shall not be used and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§737. Authorized Dealer

A. The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a Louisiana Motor Vehicle Commission license to sell those vehicles he is holding himself out as "authorized" to sell.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§739. Manufacturer and Distributor Rebates

A. It is unlawful for a manufacturer or distributor to advertise any offer of a rebate, refund, discount, or other financial inducement or incentive, which is either payable to or for the benefit of the purchaser or which reduces the amount to be paid for the vehicle, whether the amount is the vehicle purchase price, the interest or finance charge expense, or any other cost accruing to the purchaser if any

portion of such rebate, refund, discount, or other financial incentive or inducement is paid or financed or in any manner contributed to by the dealer selling the vehicle, unless the advertisement discloses that the dealer's contribution may affect the final negotiated price of the vehicle. With respect to interest or finance charge expense programs, an advertisement shall disclose that participating dealers contribute to the reduction of the financing rate and that the dealer's contribution may affect the final negotiated price of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§741. Rebate and Financing Rate Advertising by Dealers

A. It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, discount, or other financial inducement or incentive if the dealer contributes to the manufacturer's or distributor's program unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the vehicle. With respect to interest or finance charge expense programs, if a participating dealer contributes to the reduction of a financing rate, then a disclosure must state that the dealer's contribution may affect the final negotiated price of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§743. Lease Advertisements

A. Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financing plan", "drive away for \$_____ per month", or other terms or phrases that do not use the term "lease", do not constitute adequate disclosure of a lease. Lease advertisements shall not contain the phrase "no down payment" or words of similar import if any outlay of money is required to be paid by the customer to lease the vehicle. Lease terms that are not available to the general public shall not be included in advertisements directed at the general public, or all limitations and qualifications applicable to qualified buyers to the lease terms advertised shall be clearly and conspicuously disclosed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§745. Manufacturer Sales; Wholesale Prices

A. New vehicles shall not be advertised for sale in any manner that creates the impression that they are being offered for sale by the manufacturer or distributor of the vehicles. Advertisements by persons shall not contain terms such as "factory sale", "fleet prices", "wholesale prices", "factory approved", "factory sponsored", or any other similar terms which indicate sales other than retail sales from the dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§747. Savings Claims; Discounts

A. A savings claim or discount offer is prohibited except to advertise a new or demonstrator vehicle, and the advertisement must show the difference between the dealer's selling price and the manufacturer's, distributor's, or converter's total suggested list price or MSRP.

B. The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

C. If a dealer has added an option obtained from the manufacturer or distributor of the motor vehicle on which it is installed and disclosed the option and factory suggested retail price of the option on a dealership addendum sticker prior to offering the vehicle for sale at retail, the dealer may advertise a savings claim on that vehicle as long as the difference is shown between the dealer's selling price and the total selling price as disclosed on the dealership addendum sticker and discloses the factory-available options added in the advertisement. If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle.

D. Statements such as "up to", "as much as", "from", shall not be used in connection with savings or discount claims.

E. No person may advertise a savings claim or discount offer on used motor vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§749. Sales Payment Disclosures

A.1. An advertisement that contains any one of the following messages, statements, or terms:

- a. the amount of a down payment, in either a percentage or dollar amount;
- b. the amount of any payment, in either a percentage or dollar amount;
- c. the number of payments;
- d. the period of repayment; or
- e. the amount of any finance charge;

2. must include the following:

- a. the amount or percentage of the down payment;
- b. the terms of repayment (the number of months to make repayment and the amount per month) including the amount and due date of any balloon payment;
- c. the annual percentage rate or APR; and
- d. the amount of annual percentage rate, if increased, after consummation of the credit transaction.

B. An advertisement which complies with the Federal Truth-In-Leading Act (15 U.S.C. §160 et seq.) and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this Section. Any advertisement not in compliance with these federal provisions constitutes violation(s) of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§751. Payment Disclosure—Lease

A. It is an unfair or deceptive act to advertise the offer of a "consumer lease" if the advertisement contains any one of the following two "triggering terms": amount of any payment or a statement of any capitalized cost reduction or other payment required prior to or at consummation or by delivery, if delivery occurs after consummation, without clearly and conspicuously disclosing:

1. that the transaction is a lease in close proximity to and, where applicable, in the same decibel tone as, the amount of the periodic payment;
2. the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
3. the number, amounts, and due dates or periods of scheduled payments under the lease;
4. a statement of whether a security deposit is required; and
5. a statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

B. Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is part of the total amount due at lease signing shall not be more prominent than that disclosure.

C. An advertisement which complies with the Consumer Leasing Act of 1976 (15 USC 1601 et seq.), and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§753. Bait Advertisement

A. "Bait" advertisement, as defined in §707, shall not be used by any person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§755. Lowest Price Claims

A. Representing a lowest price claim, best price claim, best deal claim, or other similar superlative claim shall not be used in advertising.

B. A person may not advertise a "meet or beat" guarantee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§757. Fleet Prices

A. Terms such as "fleet prices", "fleet sales", "suppliers prices", or other terms implying that retail individual customers will be afforded the same price and/or discount as multi-purchase commercial businesses shall not be used in advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§759. Bankruptcy/Liquidation Sale

A. No licensee may willfully misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out-of-business. A person who advertises a liquidation sale, auction sale, or going out-of-business sale shall state the correct name and permanent address of the owner of the business in the advertisement. A person may not conduct a sale advertised with the phrase "going out-of-business", "closing out", "shutting doors forever", "bankruptcy sale", "foreclosure", or "bankruptcy", or similar phrases or words indicating that an enterprise is ceasing business unless the business is closing its operations and follows the procedures required by Chapter 1, Part II, Title 51, Trade and Commerce, Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule should have a positive effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. What effect will this have on the ability of the family or local government to perform the function as contained in this proposed Rule? This Rule is designed to help the family to obtain the information and help needed to own their own automobile.

Any person may submit data, views or positions, orally or in writing to the Louisiana Motor Vehicle Commission, 3519 12th Street, Metairie, LA 70002, or by telephone at 504-838-5207, and facsimile 504-838-5416.

Lessie House
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Advertising**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on costs or savings to state or local governmental units. This rule change is merely a simplification of existing advertising rules, incorporating into the administrative rules policies and interpretations which have been standard practice for many years.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not effect costs and/or economic benefits to directly affected persons or non-governmental groups. The proposed rule change updates, clarifies and provides specificity to the existing language of the advertising rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed rule change will have no impact upon competition and employment.

Lessie House
Executive Director
0708#036

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Real Estate Commission**

**Disbursement of Escrow Deposits
(LAC 46: LXVII.2901)**

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII.2901. The purpose of the amendment is to remove the Louisiana Real Estate Commission as a determining authority in the distribution of disputed escrow deposits.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXVII. Real Estate
Subpart 1. Real Estate**

Chapter 29. Disbursement of Escrow Deposits

§2901. Escrow Disputes

A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 90 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following.

1. Disburse the funds upon the written and mutual consent of all of the parties involved.

2. Disburse the funds upon a reasonable interpretation of the contract that authorizes the broker to hold the funds. Disbursement may not occur until 10 days after the broker has sent written notice to all parties and licensees.

3. Place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding.

4. Disburse the funds upon the order of a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 33:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2007 *Louisiana Register*. The proposed Rule has no known impact on family formation, stability, and autonomy.

Interested parties are invited to submit written comments on the proposed regulations through September 3, 2007, at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, Post Office Box 14785, Baton Rouge, LA, 70898-4785 or to 5222 Summa Court, Baton Rouge, LA, 70809.

Julius C. Willie
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Disbursement of Escrow Deposits**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs (savings) to state or local governmental units associated with this rule change which removes the Louisiana Real Estate Commission as a determining authority in the distribution of disputed escrow deposits.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment associated with this rule change.

Julius C. Willie
Executive Director
0708#059

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Real Estate Commission**

**Presentation of Offers and Counter Offers; Forms
(LAC 46: LXVII.3900)**

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII.3900. The purpose of the amendment is to provide for the use of a uniform purchase agreement form in

real estate transactions, as mandated by R.S. 37:1449.1, effective January 1, 2008.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXVII. Real Estate
Subpart 1. Real Estate

Chapter 39. Presentation of Offers and Counter Offers; Forms

§3900. Purchase Agreement Forms

A. The purchase agreement form used by licensees representing the buyer or seller in a residential real estate transaction shall be the *Residential Agreement to Buy or Sell*, or any successor thereof, prescribed by the Louisiana Real Estate Commission.

B. The *Residential Agreement to Buy and Sell*, or any successor thereof, shall be used in accordance with the provisions of R.S. 37:1449.1.

C. The official source of the prescribed purchase agreement form shall be the Louisiana Real Estate Commission website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 33:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2007 *Louisiana Register*. The proposed Rule has no known impact on family formation, stability, and autonomy.

Interested parties are invited to submit written comments on the proposed regulations through September 3, 2007, at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA, 70898-4785 or to 5222 Summa Court, Baton Rouge, LA, 70809.

Julius C. Willie
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Presentation of Offers and Counter Offers; Forms

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs (savings) to state or local governmental units. The proposed rule is an extension of Act 333 (2006), which enacted R.S. 37:1449.1, relative to the use of a uniform purchase agreement form in real estate transactions. The rule provides the name of the form required by R.S. 37:1449.1, how it is obtained, and how it is used.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment as a result of this rule change.

Julius C. Willie
Executive Director
0708#058

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Examiners of Nursing Facility Administrators

Pre-Examination Requirements: Conditions Precedent
(LAC 46:XLIX.503)

The Board of Examiners of Nursing Facility Administrators proposes to amend LAC 46:XLIX.503 et seq., in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Board of Examiners of Nursing Facility Administrators Act R.S. 37:2504A(1).

The purpose of the proposed Rule change is to ensure continued quality professional healthcare in the nursing home industry. To provide such professional healthcare it is deemed necessary to increase educational requirements through a college degree program from an accredited institute of higher learning.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLIX. Board of Examiners of Nursing Facility Administrators

Chapter 5. Examinations

§503. Pre-Examination Requirements: Conditions Precedent

A. No person shall be admitted to or be permitted to take an examination for licensing as a nursing home administrator unless he shall have first submitted evidence satisfactory to the board that he:

1. - 4. ...

5. has successfully completed:

a. a bachelors degree from an accredited institute of higher learning; or

b. 60 hours of college education with an overall C average and three years of experience in nursing or administration in a licensed nursing facility; or

c. a two year nursing degree and at least two years experience as a director of nursing in a licensed nursing facility within the last five years prior to making application for licensure as a nursing facility administrator.

B. Nursing as used in Subparagraph A.5.b of this Section shall mean an individual who is a licensed practical nurse or registered nurse or equivalent.

C. Administration as used in Subparagraph A.5.b of this Section shall mean an individual whose primary duties include billing, accounts receivable or accounts payable.

D. Fifteen hours of such secondary education must be in the combination of the following courses: accounting, business law, economics, general health care, gerontology, management, marketing, nutrition, physical science, psychology, and sociology.

E. The provisions of Subparagraphs A.5.b, c, and d of this Section shall terminate and be of no effect beginning January 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 20:789 (July 1994), LR 33:

Family Impact Statement

The proposed amendments, to LAC 46:XLIX.503, should not have any impact on family as defined by R.S. 49:972. There should not be any effect on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments until 4:00 p.m., September 10, 2007, to Mark A. Hebert, Board of Examiners of Nursing Facility Administrators, 5647 Superior Drive, Baton Rouge, LA 70816.

Mark A. Hebert, NFA
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Pre-Examination Requirements: Conditions Precedent

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the rule publication costs, which are estimated to be \$200 in fiscal year 2007, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Examiners, any state unit or local government unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will increase educational requirements from 60 semester hours to a Bachelors degree in order to be licensed by the Board of Examiners of Nursing Facility Administrators. There is no anticipated cost increase to most applicants as approximately 90 percent of new applicants in Fiscal year 05-06 had BS or BA degrees. The Board expects this trend to continue until the rule is fully implemented.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated significant effect on competition and employment, other than the added incentive that a degree would bring to the decision when hiring one individual with a degree over another who may be "grandfathered" and had only received 60 or more credit hours.

Mark A. Hebert
Executive Director
0708#023

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Medical Professionals; Practice
(LAC 46:XLV.4231-4239)

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., that the Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by the Louisiana Medical Practice Act, R.S. 37:1261-92 and by R.S. 37:1309, intends to amend Title 46:XLV, Subpart 3, Chapter 42 of its existing Rules governing illegal payments to adopt Rules implementing and providing for enforcement, with respect to physicians, of Act 819, adopted in 2006 by the Louisiana Legislature, enacting R.S. 37:1306-1310. The proposed Rules, which the Act directs the board to promulgate, prohibits physicians providing medical services within the primary service area of a rural hospital from making referrals, for specified healthcare services, to healthcare facilities located within the primary service area of a rural hospital in which they or an immediate family member have a direct or indirect ownership interest. The proposed Rules also prohibit physicians from billing for healthcare services provided at a time during which a referral was made in violation of the proposed Rules. Consistent with the implementing law, the proposed Rules exempt physicians who have offered the rural hospital the option to participate in the ownership of the healthcare facility on commercially reasonable terms and conditions commensurate with the interest offered of not less than a majority interest in the healthcare facility. The proposed Rules interpret and define critical terms appearing in the subject law, specify the manner in which physicians must comply with the prohibitions and requirements and provide for administrative enforcement and sanctions with respect to violations, LAC 46:XLV, Subpart 3, Chapter 42, §§4231-4239. The proposed Rules are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 42. Illegal Payments; Required Disclosure of Financial Interests; Prohibition on Rural Physician Self-Referral

Subchapter C. Prohibition on Rural Physician Self Referral

§4231. Scope and Purpose of Chapter

A. Scope of Chapter. The rules of this Chapter implement enforcement of R.S. 37:1308, which prohibits physician referral of health care services to a healthcare facility, located within the primary service area of a rural hospital, in which the referring physician or an immediate family member of the referring physician maintains a direct or indirect ownership interest.

B. Declaration of Purpose. Interpretation and Application. Rural hospitals are an essential part of the healthcare delivery system in this state. For many, rural hospitals and the full time emergency room services they offer provide the only healthcare services readily available.

The development of healthcare facilities that duplicate services in the primary service areas of rural hospitals endangers their continued existence by reducing revenue and potentially leading to the closure or reduction of access to hospital and emergency room services. The purpose of these rules and the laws they implement is to encourage innovative collaboration between and among rural hospitals and physicians in the delivery of services in rural areas. These rules shall be interpreted, construed, and applied so as to give effect to such purposes and intent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

§4233. Definitions and Construction

A. Definitions. As used in this Chapter the following terms shall have the following meanings unless the context requires otherwise.

Board—the Louisiana State Board of Medical Examiners.

Commercially Reasonable Terms and Conditions—those terms and conditions that would be reasonable to a prudent individual operating a business of similar type and size as a rural hospital even in the absence of referrals to the rural hospital or healthcare facility by a physician who owns, or whose immediate family member owns, an interest in the healthcare facility in which the rural hospital has been offered the opportunity to participate as an owner. The provisions of 42 U.S.C. 1395nn, and the regulations and regulatory guidance promulgated and issued by the Centers for Medicare and Medicaid Services and its predecessor or successor, shall be considered in determining whether terms and conditions are commercially reasonable.

Department—the Louisiana Department of Health and Hospitals.

Healthcare Facility—an independent diagnostic testing facility, magnetic resonance imaging equipment or facility, computerized tomography equipment or facility, Positron Emission Tomography scanner or facility, an ambulatory surgical center licensed by the department, or any outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center. However, the term *healthcare facility* shall not mean:

a. a rural hospital that existed on April 1, 2006, or that replaces a rural hospital that existed on April 1, 2006;

b. a rural hospital that is a replacement facility of a rural hospital that was damaged by Hurricane Rita or Hurricane Katrina;

c. an entity owned or operated by the state of Louisiana or the United States;

d. a physician's practice or a physician group practice, when such practice is owned and operated exclusively by physicians for the purpose of providing healthcare services and is not licensed or Medicare-certified as a rural health clinic;

e. any facility under development, including services provided by a mobile unit that is part of an existing facility as of April 1, 2006, or operating as of April 1, 2006. A facility shall be considered under development if:

i. a representative of the facility has, prior to April 1, 2006, filed a license application with the department for the establishment of the proposed healthcare facility;

ii. the facility can demonstrate that a minimum of \$25,000 in architectural or engineering expenses have been incurred in connection with the proposed facility prior to April 1, 2006; or

iii. the facility has received a certificate of occupancy; or

f. any community health care clinic or rural health clinic.

Healthcare Services—magnetic resonance imaging services, computerized tomography services, Positron Emission Tomography scanner services, ultrasound services, any other imaging services that have become generally accepted methods of providing imaging services after April 17, 2006, as determined by the department, any services rendered by an ambulatory surgical center licensed by the department, or any services rendered by an outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center.

Immediate Family Member—husband or wife, birth or adoptive parent, child, or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, grandparent or grandchild, and spouse of grandparent or grandchild.

Primary Service Area—the smaller of either a radius of twenty-five miles from a rural hospital's main campus or the area represented by the number of postal zip codes, commencing with the rural hospital's zip code, in which seventy-five percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent twelve month Medicare cost reporting period. In determining the primary service area, each outpatient encounter and each inpatient stay shall be viewed as a separate patient, and the zip code attributable to the patient shall be the zip code of the patient at the time of the inpatient stay or outpatient encounter. Primary service area descriptions published by the department in the *Louisiana Register* shall be utilized in determining primary service areas. However, the term *primary service area* shall not include the cities of Alexandria, Baton Rouge, Bossier City, Covington, Hammond, Houma, Kenner, Lafayette, Lake Charles, Mandeville, Monroe, New Iberia, New Orleans, Opelousas, Ponchatoula, Ruston, Shreveport, Slidell, Thibodaux, or West Monroe.

Proposing Party—a person or entity that offers to enter into a joint venture with a rural hospital as well as any person or entity related to the proposing party by common ownership or control as such terms are defined for purposes of 42 C.F.R. 413.17, or its successor provision.

Rural Hospital—shall be defined as provided for in R.S. 40:1300.143, as such law existed on April 1, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

§4235. Physician Prohibitions

A. Except as provided in §4337 of this Subchapter, no physician shall make a referral to any healthcare facility for the receipt of healthcare services in which the referring physician or an immediate family member of the referring physician maintains a direct or indirect ownership interest.

The prohibition contained in this Section shall only apply if both of the following conditions are met:

1. the physician provides professional medical services within the primary service area of a rural hospital; and

2. the healthcare facility in which the physician or any immediate family member of the physician maintains a direct or indirect ownership is located within the primary service area of any rural hospital.

B. No physician who refers a patient to a healthcare facility in contravention of this Section shall bill any patient, third party payer, or any other entity for healthcare services provided by the physician to the patient at the time during which the referral was made in violation of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

§4237. Exceptions

A. The prohibitions contained in Section 4235 of this Subchapter shall not apply to healthcare services furnished by a healthcare facility provided that:

1. the rural hospital in whose primary service area such facility is located is offered the option to participate in the ownership of the healthcare facility on commercially reasonable terms and conditions that are conveyed in a written offer by the proposing party;

2. the offer is priced commensurate with the interest offered, whether such purchase price is in the form of cash or debt, and the interest offered is not less than a majority interest in the healthcare facility;

3. the rural hospital accepts or rejects the offer in writing within ninety days of receipt from the proposing party after being provided an opportunity to review the following with respect to the proposed healthcare facility:

a. a bona fide business plan, including a financial feasibility study;

b. pro forma income and balance sheets; and

c. a sources and uses of funds analysis;

4. the closing of the acquisition of the ownership interest occurs within ninety days of written acceptance of the offer unless delayed by mutual consent of the rural hospital and proposing party; and

5. the rural hospital and proposing party act in good faith in accordance with the requirements of Civil Code Article 1759.

B. The prohibitions contained in Section 4235 of this Subchapter shall not be applicable until and unless *primary service area descriptions* are published in the *Louisiana Register* in accordance with R.S. 37:1309B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

§4239. Effect of Violations; Sanctions

A. Any violation or failure of compliance with the provisions of this Subchapter shall be deemed a violation of the Medical Practice Act, R.S. 37:1285, providing cause for the board to suspend the license of a physician culpable of such violation or take such other action as the board may deem appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 33:

Family Impact Statement

The proposed Rules have no known impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments to Rita Arceneaux., Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at P. O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130). She is responsible for responding to inquiries on the proposed Rules. A public hearing will be held on Monday, September 24, 2007 at 3 p.m. at the board's offices, 630 Camp Street, New Orleans, LA 70130. At that time all interested persons are invited to attend and orally present data, views, comments or arguments. The deadline for receipt of written comments is 3 p.m. on Monday, September 24, 2007, the date of the public hearing.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Medical Professionals; Practice

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than notice and rule publication costs estimated at a combined total of \$556, which costs will be absorbed within the board's budget during FY 2007-08, it is not anticipated that the proposed rule amendments will result in any additional costs or savings to the board or any other state or local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is not anticipated that the proposed rule amendments will have any effect on the revenue collections of the board or those of any other state or governmental unit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The board proposes to adopt rules for enforcement of requirements and restrictions on physicians, consistent with the provisions of Act 819 of the 2006 Regular Session of the Legislature (R.S. 37:1306-1310). The Act directs the board to promulgate rules and regulations providing for disciplinary action for violating its mandate that prohibits physicians providing medical services within the primary service area of a rural hospital from making referrals for specified healthcare services to healthcare facilities located within the primary service area of a hospital in which they or an immediate family member have a direct or indirect ownership interest. The proposed rules also prohibit physicians from billing for healthcare services provided at a time during which a referral was made in violation of the proposed rules. Additionally, the rules except physicians who offer the rural hospital the option to participate in the ownership of the healthcare facility on commercially reasonable terms and conditions commensurate with the interest offered of not less than a majority interest in the healthcare facility. While it is anticipated that there may well be an unquantifiable increase in compliance costs, workload and paperwork to affected individuals and groups, inasmuch as there is no known available data on the number of physicians, healthcare facilities or rural hospitals that may be affected by the proposed rules, it is not possible to estimate the

effect on costs, workload or paperwork that such physicians, healthcare facilities, or hospitals may incur. Similarly, while it is anticipated that the proposed rules may impact receipts or income of physicians and healthcare facilities that currently receive income or other remuneration from such referrals, and of rural hospitals which may not, there is no known available data indicating the number of physicians, healthcare facilities or rural hospitals that might be so affected or the extent of income or other remuneration at issue. Therefore, an estimate of the impact on receipts and/or income of persons or groups that may be affected by the proposed rules is not possible.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the proposed rules may well impact competition between physicians who currently refer patients for specified healthcare services to healthcare facilities located within the primary service area of a rural hospital, in which they or an immediate family member have a direct or indirect ownership interest; and may therefore also impact various healthcare facilities and rural hospitals. Nevertheless, inasmuch as there is no known available data indicating the number of physicians that may be affected by application of the rule, the type or number of referrals that may fall within the scope of the rule, or the number of healthcare facilities or rural hospitals that may be affected, an estimate of the impact on competition among physicians, healthcare facilities or rural hospitals that may result from the proposed rules is not possible.

Robert L. Marier, M.D.
Executive Director
0708#069

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Veterinary Medicine

Veterinary Practice
(LAC 46:LXXXV.700, 701, and 711)

The Louisiana Board of Veterinary Medicine proposes to amend and adopt LAC 46:LXXXV.700, 701, and 711 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1569. This text is being amended to more clearly define minimum standards for veterinary medical record keeping, and clarifies the requirements for a veterinary mobile practice vehicle. The proposed Rule amendment has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 7. Veterinary Practice

§700. Definitions

* * *

Mobile Clinic—a vehicle with special medical or surgical facilities, including examination and treatment areas and/or surgical facilities, which provides veterinary care to small animals and/or large animals where the patient can be taken into the vehicle.

Mobile Practice Vehicle—a vehicle used by a veterinarian in a house call or farm call to provide veterinary care to large

animals only (defined exclusively as equine, food animals, and exotics) where the patient is not taken into the vehicle. The vehicle may be an extension of a hospital or clinic, and/or may have the capabilities of providing aftercare and/or emergency care services.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:666 (June 1994), LR 20:1381 (December 1994), LR 24:940, 941 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998), LR 27:51 (January 2001), LR 27:543 (April 2001), LR 31:3162 (December 2005), LR 33:

§701. Record Keeping

A. ...

1. Each Louisiana licensed veterinarian shall maintain an individual written, or computer generated, record on each animal or herd to include identification of animal or herd, diagnosis of illness, disease or condition and treatment provided, progress notes and reassessment, and discharge summary, as follows.

a.i. Identification of the animal or herd shall include the breed, sex, description or permanent identification (if available), tattoos or other identifying marks, and the name and address of the owner.

ii. Diagnosis of illness, disease or condition shall document the animal or herd's history, signs, symptoms, complaints, objective tests such as radiographs and laboratory results, and the veterinarian's interpretation of examination findings, as well as intended goals and treatment including surgical procedures and/or drug therapy. Drug therapy shall include the names of legend drugs, controlled substances and/or over-the-counter (OTC) products as set forth below; the date and amount administered, prescribed or dispensed; and the method of administration.

iii. A progress note shall document the animal or herd's subjective status, changes in objective findings, and progression or regression of goals and treatment. A progress note shall be documented for each visit, for continuation of treatment, for the particular diagnosed illness, disease, or condition.

iv. Reassessment shall include all elements of a progress note, as well as a revision of the treatment plan as indicated. A new diagnosis of illness, disease or condition may be warranted. Reassessment shall only be performed by the veterinarian. Reassessment, including a new diagnosis of illness, disease, or condition when applicable, shall be documented at the time such is performed.

v. Discharge summary shall document the reasons for discontinuation of care, degree or goal of achievement, and a discharge plan, if required, which shall only be documented and signed by the attending veterinarian.

vi. The documentation standards set forth above do not mandate a particular format, however, a record must include these elements, as well as any other document required by law or the board's rules. Examples include General Anaesthesia Consent Forms, Euthanasia Consent Forms, documents involving prescribing, administering, or dispensing legend drugs or controlled substances, and billing invoices or statements of services or products provided. The

veterinarian shall be ultimately responsible for the content and maintenance of the record.

A.1.b. - D.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 6:71 (February 1980), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), LR 19:1328 (October 1993), LR 20:1381 (December 1994), LR 23:969 (August 1997), LR 24:941 (May 1998), LR 25:872 (May 1999), LR 33:

§711. Definitions for Classification of Practice

Facilities

A. - E.12. ...

F. A mobile practice vehicle shall comply with the following requirements.

1. A mobile practice vehicle shall provide veterinary care to large animals only (defined exclusively as equine, food animals, and exotics) where the patient is not taken into the vehicle.

2. A mobile practice vehicle may be an extension of an existing hospital and/or clinic defined in §700. The hospital or clinic associated with the mobile practice vehicle shall operate in compliance with §711A and B.

3. The veterinarian operating or providing veterinary care in a mobile practice vehicle which does not have the capabilities of providing aftercare and/or emergency care services, and/or which is not an extension of a existing hospital or clinic, shall have a prior written agreement with a local veterinary hospital or clinic, within a 30 mile or 30 minutes travel time, to provide aftercare and/or emergency care services. The written agreement to provide aftercare and/or emergency care services in this rule shall not be required if the mobile practice vehicle is an extension of a existing hospital or clinic, and/or has the capabilities of providing aftercare and/or emergency care services.

4. A notice of available aftercare and/or emergency care services, including the telephone number and physical address of the local veterinary hospital or clinic, or hospital or existing clinic associated with the mobile practice vehicle if applicable, shall be posted in a conspicuous place in or on the mobile practice vehicle, and a copy of the notice or information shall be given to each client prior to the provision of veterinary care.

5. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall physically remain on site until all patients are discharged to their respective owners, or authorized agents.

6. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for record keeping regarding the storage, maintenance and availability to the client of the medical records for the patients as set forth in the board's rules on record keeping.

7. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall comply with the requirements for maintaining, administering, dispensing, and prescribing any drug, medicine, chemical, and/or biological agent as set forth in the board's rules.

8. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for the

information and representations provided to the clients by the staff of the mobile practice vehicle.

9. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall have his license or current renewal, in good standing, to practice veterinary medicine in Louisiana on display in a conspicuous place on or in the mobile practice vehicle.

10. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall make all decisions which involve, whether directly or indirectly, the practice of veterinary medicine and will be held accountable for such decisions in accordance with the Veterinary Practice Act, the board's rules, and other applicable laws.

11. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall be responsible for compliance with all standards and requirements set forth in the Veterinary Practice Act, the board's rules, and other applicable laws.

12. The veterinarian operating or providing veterinary care in a mobile practice vehicle shall provide the board, upon written demand, a copy of the written agreement with the local veterinary hospital or clinic required by this rule, if such is not the hospital or clinic associated with the mobile practice vehicle and/or the mobile practice vehicle does not have the capabilities of providing aftercare and/or emergency care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1330 (October 1993), amended LR 23:969 (August 1997), LR 24:2123 (November 1998), LR 31:3162 (December 2005), LR 33:

Interested parties may submit written comments to Wendy D. Parrish, Administrative Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801, or by facsimile to (225) 342-2142. Comments will be accepted through the close of business on September 20, 2007. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on Thursday, September 27, 2007, at 10 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA.

Wendy D. Parrish
Administrative Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Veterinary Practice

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$300 in FY 2008). Licensees will be informed of this rule change via the board's regular newsletter, website, or other direct mailings, which result in minimal costs to the Board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the amendment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules amendment clarifies minimum standards for veterinary medical record keeping, and more clearly defines veterinary mobile practice vehicle.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule.

Wendy D. Parrish
Administrative Director
0708#034

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Public Health**

Water and Wastewater Operator Certification and Sewage Disposal (LAC 48:V.Chapter 73 and XIII.303)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, pursuant to the authority granted in R.S. 40:1148, proposes to amend the Louisiana Administrative Code (LAC), Title 48 (Public Health-General), Part V, Subpart 21, Chapter 73 (Water and Wastewater Operator Certification). In addition, the state health officer acting through the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, pursuant to the authority in R.S. 40:4(A)(6) and R.S. 40:5 intends to amend LAC, Title 51 (Public Health-Sanitary Code), Part XIII (Sewage Disposal). These proposed amendments are necessary in order to implement the provisions of Acts 236 and 270 of the 2005 Regular Session of the Louisiana Legislature. In addition, other amendments throughout the entire Operator Certification rule have been proposed with the goal of clarifying the requirements to make the regulations easier to understand by the general public as well as by the water and sewerage system operators themselves. The State Sanitary Code (Part XIII, Sewage Disposal) is proposed to be amended to make reference therein to the requirement for certified wastewater operators for sewerage systems and to provide an exception thereto.

**Title 48
PUBLIC HEALTH—GENERAL
Part V. Preventive Health Services
Subpart 21. Water and Wastewater Operator
Certification**

Chapter 73. Certification

§7301. Definitions

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter are defined for the purposes thereof as follows.

Committee of Certification—as defined in statute R.S. 40:1142.

Complex Treatment—occurs when a water supply system utilizes two or more mechanical units and/or chemical feed units, in addition to at least simple

disinfection, which alters the physical or chemical quality of finished water.

Department—the Louisiana Department of Health and Hospitals, Office of Public Health.

Ground Water (or Groundwater)—subsurface water occupying the saturation zone from which wells and springs are fed. In a strict sense the term applies only to water below the water table.

Ground Water System (or Groundwater System)—a water supply system using ground water as the source of water supply.

Ground Water Under the Direct Influence of Surface Water—any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in site specific water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions. The DHH determination of direct influence may be based on an evaluation of site specific measurements of water quality and/or well characteristics and geology with field evaluation.

Person—an individual, a public or private corporation, an association, a partnership, a public body created by or pursuant to state law, the state of Louisiana, an agency or political subdivision of the state, a federally recognized Indian tribe, the United States government, a political subdivision of the United States government, and any officer, employee, or agent of one of those entities.

Operator—the individual, as determined by the Committee of Certification, in attendance on site of a water supply system or sewerage system and whose performance, judgment, and direction affects either the safety, sanitary quality, or quantity of water or sewage treated or delivered.

Professional Operator—an operator of a water supply system or a wastewater system who holds at least one professional operator certificate.

Professional Operator Certificate—equivalent to a regular operator certificate as that term is used in R.S. 40:1147(B) and (C).

Sewerage System or Wastewater System—a system of piping and appurtenances, including sewage treatment facilities having a capacity of at least 1,501 gallons per day or greater, for collecting and conveying wastewater from source to discharge. In addition, this term shall include facilities which handle 1,500 gallons or less only when such facilities are for non-residential applications, e.g., a commercial sewerage treatment plant serving a restaurant.

Simple Disinfection—the process of disinfection of potable water utilizing only a simple chemical feed of hypochlorite solution or injection of chlorine gas.

Source of Water Supply—any well, spring, cistern, infiltration gallery, stream, reservoir, pond, or lake from which, by any means, water is taken either temporarily or continuously for potable use.

Surface Water—all water open to the atmosphere and subject to surface runoff.

Surface Water System—a water supply system using surface water or ground water under the direct influence of surface water (GWUDISW) as a source of water supply.

Wastewater System—see *sewerage system*.

Water Supply System—the system of pipe, structures and facilities through which water is obtained, treated and sold, distributed or otherwise offered to the public for household or other uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002), amended LR 33:

§7303. General Certification and Presence

Requirements

A. The basic statutory requirements for operator certification are set forth in R.S. 40:1141-1151.

B. The Operator of any water supply system or any sewerage system shall hold current and valid professional operator certificate(s) [or, where applicable, limited certificate(s)] of the required category(s)/subcategory(s) at or above the level (class) required for the facility or facilities over which he is in responsible charge. Additionally, an operator shall demonstrate that, when not actually on site at the facility, he is capable of responding to that location within one hour of being notified that his presence is needed.

C. Surface water systems and groundwater systems utilizing complex treatment shall have an operator who holds a water treatment certificate, at or above the population-based facility classification level required in §7307.A, present at all times while the treatment facility is in operation. Effective [three years from the date of publication of the final Rule], surface water systems and groundwater systems utilizing complex treatment shall (regardless of population served) have a certified water treatment operator at or above the Class III level present at all times while the treatment facility is in operation. Exact numbers of certified operators required may be determined by the committee of certification. Exceptions:

1. The requirements of this Subsection relative to an operator being present at all times while the treatment facility is in operation shall not apply to systems which serve less than 10,000 persons and which utilize automated operation systems which monitor system operation, record all required readings, notify the operator in the event of a system upset or failure, and allow the operator to remotely control or shut down the system. The determination of whether an automated operation system meets the minimum requirements of this Subsection shall be made by the department on behalf of the committee of certification. Regardless of such exception, an operator holding a water treatment certificate of the proper level shall physically visit and be on-site of the treatment plant daily, preferably for the entirety of at least one shift, while water is being treated.

2. For small groundwater systems only, other exceptions relative to an operator being present at all times while the treatment facility is in operation may be granted by the department in writing on a case-by-case basis. For example, when a small groundwater system meets the definition of complex treatment (as defined herein) yet the technology utilized for the treatment of secondary contaminants is so simple and uncomplicated that the department deems:

- a. that an operator would not be necessary to remain at all times while the treatment facility is in operation; and,
- b. that the installation of an automated operation system for same is unreasonable.

3. After issuance of an initial written exception as authorized under Paragraph C.2 of this Section certain situations (for example, a significant increase in the number of persons served by the system, treatment or chemical changes, problems encountered, etc.) may be grounds for the suspension and/or revocation of such exception by the department.

D. Wastewater systems which normally operate on multiple shifts are required to have at least one certified treatment operator, at or above the appropriate level required, present at the treatment facility on each shift .

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002), amended LR 33:

§7305. Categories/Subcategories of Certification/Specific Certification Requirements for each Category/Subcategory

A. Certifications are offered in each of the following areas (categories), of qualification:

1. Water Category, consisting of the following subcategories:

- a. water production
- b. water distribution
- c. water treatment; and

2. Wastewater Category, consisting of the following subcategories:

- a. wastewater collection,
- b. wastewater treatment.

B. Water Production Certificate Requirements

1. Operators shall hold water production certifications for all water supply systems (including consecutive water systems).

C. Water Distribution Certificate Requirements

1. Operators shall hold water distribution certifications for all portions of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer (or to the master meter of any consecutive system).

D. Water Treatment Certificate Requirements

1. Operators shall hold water treatment certifications , at or above the population-based facility classification level required in §7307.A, for all facilities which treat surface water or ground water under the direct influence of surface water, as well as for those facilities which utilize complex treatment on groundwater. Effective [three years from the date of publication of the final rule], operators shall hold water treatment certifications of at least the Class III level for all facilities (regardless of population) which treat surface water or groundwater under the direct influence of surface water as well as for those facilities which utilize complex treatment on groundwater.

2. Operators shall hold water treatment certifications, at or above the appropriate level required, for any facility which treats groundwater. Exception: Operators who hold water treatment certification shall not be required for any facility which treats groundwater wherein the only type of treatment employed is simple disinfection, and where the well(s) has been determined to not be under the direct influence of surface water.

E. Wastewater Treatment Certificate Requirements

1. Operators who hold wastewater treatment certifications are required on all facilities which provide for the treatment of wastewater and the reduction and/or handling of sludge removed from such wastewater.

F. Wastewater Collection Certificate Requirements

1. Operators who hold wastewater collection certifications are required on all components of a sewerage system except for the sewage treatment plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:503 (March 2002), repromulgated LR 28:839 (April 2002), amended LR 33:

§7307. Levels (Classes) of Certification for Types of Facilities

A. Required levels of certification for an operator, based on facility classification, are as follows.

Population Served by Facility	Facility Classification Level
<1,000	Class 1
1,001-5,000	Class 3
5,001-25,000	Class 3
Over 25,000	Class 4

B. An optional level of certification is offered in the fields of water or wastewater. It is known as the Class 5 level (which minimally involves water or wastewater training conducted at a Louisiana university) as authorized by Act 270 of the 2005 Regular Session [see R.S. 40:1142(F)]. Operators who hold a Class 5 certificate shall be designated as a Senior Operator. While not presently required for any facility, Class 5 level certifications shall be made available by the department and committee of certification. Each Louisiana university offering Class 5 level courses shall obtain prior approval of such course(s) from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:503 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

§7309. Operator Qualifications—General (Education/Experience)

A. Whereas the operator certification rule prior to April 1, 2002 specified minimum operator qualifications in years, these values have been converted to "points" for ease of integration with continuing education credits and substitutions between education and experience. Operator qualifications for the various levels of certification shall be determined by minimum point values as follows.

Certification Level	Required Points
Op-In-Training	0
Class 1	1
Class 2	2
Class 3	5
Class 4	8
Class 5	12

NOTE: A minimum educational requirement of a High School Diploma [or General Educational Development (GED) credential] is applied to ALL levels of certification. Required point values for education and experience are in addition to this minimum level of education. Point value required for

Classes 1 and 2 may be from experience alone although 25 percent of this value may be acquired from education credit. No more than 75 percent of the total required points for Classes 3 or 4 may be obtained from education or experience alone. Certifications at the Class 5 level, as authorized by R.S. 40:1142(F), with the designation of Senior Operator, while not presently required for any facility, shall be made available by the department and committee of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

§7311. Operator Qualifications—Substitutions/Assignment of Point Values

A. Point values for education, continuing education, and experience are assigned as follows.

1. Education

a. Each year of formal college education (minimum of 30 semester hours) = 1 point

b. Each year of formal graduate level education = 1.5 points

c. Each semester hour (credit) for college-level courses = 0.033 point

d. Each 40-hour qualified, approved training course = 0.10 point

e. Each 8 hours of qualifying, approved continuing education = 0.02 point

f. Each 1 hour of qualifying, approved continuing education = 0.0025 point

2. Experience

a. Each year of qualifying operator experience = 1 point

b. Each year of qualifying related experience = 0.5 point

c. Each year of qualifying supervisory experience = 1.5 points

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), repromulgated LR 33:

§7313. Certificate Display/Carrying Requirements and Validity

A. Certified operator certificates must be displayed by the holder in a prominent place in the classified facility. Additionally, at such time as a certified operator is issued a certified operator identification card, the operator shall carry said identification card on their person while on duty in the classified facility. Failure to do so may be considered grounds for revocation of the certificate in accordance with R.S. 40:1145(D).

B. Certified operator certificates shall be valid only so long as the holder uses reasonable care, judgment, and knowledge in the performance of his/her duties. No certified operator certificate will be valid if obtained or renewed through fraud, deceit, or the submission of inaccurate qualification data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

§7314. Professional Operator Certificates

A. All persons seeking to hold a professional operator certificate must be employed by (or own) a water or wastewater system/facility. Upon obtaining at least one Professional Operator Certificate, such individual may refer to himself as a professional operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 33:

§7315. Limited Certificates

A. Only those operator limited certificates issued prior to April 1, 2002, in compliance with R.S. 40:1147(B) remain valid, and shall remain valid only for the facility/system in which the operator was previously employed and for the conditions of operations and duties involved on April 1, 2002.

B. Operator limited certificates shall be renewable upon application provided the requirements for renewal without reexamination for certificates of the same class are satisfied.

C. Persons granted operator limited certificates and renewals of operator limited certificates shall pay the same fees as are fixed for professional operator certificates of the same class.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR33:

§7317. Operator-in-Training Certificates

A. Operator-in-training certificates may be granted to newly hired personnel who have not previously been certified, or who have not held any type of operator certification in excess of two years, and who do not presently qualify for a professional or provisional operator certificate. Such individuals may make application for the appropriate category/subcategory of operator-in-training certificate. The operator certification officer will then begin maintaining records of all approved education, training and experience credits accumulated by the operator-in-training. An operator-in-training certificate shall be valid for a period of 24 months from the date of issue. Persons holding an operator-in-training certificate may not be designated as the professional operator of the water or wastewater system/facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002), amended LR 33:

§7319. Provisional Certificates

A. A provisional certificate may be issued to any applicant who successfully passes an examination and meets the education and experience requirements of this Chapter. Provisional certificates shall not qualify an individual to serve as the professional operator of a water or wastewater system/facility and are not offered to operators currently employed at a water or wastewater system/facility.

B. A provisional certificate may be converted to a professional operator certificate if the certificate holder meets all qualifications associated with obtaining same and

assumes the duties of an active operator and is employed by a water or wastewater system/facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

§7321. Examinations—General

A. All operators wishing to become certified by the State of Louisiana, must pass an examination demonstrating they have the necessary knowledge, skills, judgement, and abilities as specified by the committee of certification. All exam questions will be validated by the committee of certification or their appointees.

B. Exams shall be conducted in the English language.

C. The committee of certification has established open examination periods for water and/or wastewater operators to be examined. They are as follows.

1. One open exam shall be conducted at the conclusion of the Louisiana Conference on Water Supply, Sewerage and Industrial Waste, Inc.'s annual "Short Course" meeting which is held in various locations around the state.

2. One open exam shall be conducted at the conclusion of the Louisiana Rural Water Association, Inc.'s Annual Conference.

3. Other open examinations may be scheduled at other locations as determined by the committee of certification based on their determination of need subject to provisions of §7305 of this Chapter.

4. Application for examinations to be given following scheduled training courses, seminars, workshops, etc., (as listed in §§7329 and 7331 of this Chapter) will be considered on a case-by-case basis by the committee of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

§7323. Examinations—Individual Operator Requirements

A. All persons seeking to become a certified operator or certified operators desiring to increase their level or category/subcategory(s) of certification must make written application to the Committee of Certification to take each examination or series of examinations. The application forms will be made available to the examinee prior to the exam period with ample time given to allow completion prior to the actual exam period. The examinee carries the responsibility for the accuracy of the information contained in the application.

B. Applicants for certification examinations must pay the prescribed exam fee at the conclusion of testing (see §§7333 and 7334 of this Chapter).

C. All examinations shall be administered in the English language. Requests for examinations to be administered orally may be considered by the operator certification administrator, upon written request by an applicant, submitted at least 30 days in advance, with verifiable proof from a physician that the applicant has a medical condition

temporarily preventing him from taking the examination in the conventional (written) manner.

D. Exams shall be taken and passed in sequence beginning with the Class 1 and proceeding up to the Class 4 (or optional Class 5) in each category/subcategory.

E. Applicants may not apply to take and may not take examinations for certification higher than one level above that for which they are currently qualified.

F. If an applicant takes an examination and fails to attain a passing grade (70 percent or higher), he must wait a minimum of 90 days before he can take another exam in the same subcategory and level. After three failed attempts at the same examination, an applicant will be required to attend a 40-hour training course before retesting will be allowed.

G. All examinations will be graded by department personnel and retained for two years. The examinee will be notified of the results. Examinations will not be returned to the examinee, but may, upon written request, be reviewed in the Operator Certification Program Office in Baton Rouge within 30 days following receipt of the notification of results.

H. Individuals caught cheating during the operator certification examinations or found to have prejudiced these exams or applications in any way shall be entitled to an administrative hearing before the committee of certification. If the committee of certification finds that valid grounds exist, it shall recommend that the state health officer revoke the subject's current certificates, it may refuse to certify the applicant and it may reject future applications. As provided in the Administrative Procedure Act, an aggrieved party may seek judicial review of the state health officer's action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

§7325. Application for Certification

A. Once the applicant has passed the required examination(s), has met the minimum education and experience requirements, and has provided evidence that he/she is currently employed by a water or wastewater system/facility (if required), the department will notify the applicant that he/she may apply for the issuance of the appropriate operator certificate.

B.1. All applications for certificates shall be addressed to:

Administrator, Operator Certification Program
Louisiana Department of Health and Hospitals
Office of Public Health
CEHS Mail Bin # 6
P.O. Box 4489, Baton Rouge, LA 70821-4489

2. Applications for certificates must be accompanied by the prescribed fees as stated in §7335 of this Chapter.

C. All initial applications for new certificates received on or after April 1, 2002, shall be accompanied by a "Certification Law and Rules Examination" to be completed by the applicant as part of the application process.

D. Applicants who pass an examination but do not meet the education and experience requirements will be notified of what education and/or experience and/or training is required to qualify. If an applicant qualifies within two years of the date of the examination, an application with the prescribed fee must be received by the operator certification

unit before the expiration of this two-year period in order that a certificate may be issued; otherwise, reexamination of the applicant will be required.

E. Individuals who have combined work experience in both water and wastewater may make written application to the certification committee for credit toward certification in either or both of the two fields. The work experience will be listed in a detailed resumé application which details the overlapping areas of work responsibility. This application will be certified by the immediate supervisor of the individual requesting certification. The committee of certification will rule on each individual application as presented. These applications will be reviewed by a screening subcommittee composed of members of the operator certification committee.

F. One individual may be designated as the operator over more than one (several) water or wastewater systems or districts provided that he/she can demonstrate active involvement on a daily basis in the operation of each of the systems, and is able to respond to any of the systems' facilities within one hour of notification that his/her presence is required (one-hour rule, see §7303.B). Operators retained by multiple facilities under a contractual basis shall, when required by the committee of certification, satisfactorily demonstrate their ability to adequately oversee the operation of each and all facilities under their supervision. Such demonstration shall include, but is not limited to, substantiating daily operational involvement and proving that compliance with the one-hour rule is achievable.

G. Experience must be in actual water system or sewerage (wastewater) system operation or its approved equivalent and must be in the field applying to the respective subcategory(s). Experience as foreman or supervisor in most capacities in water and sewerage systems may be considered acceptable. Experience in a purely clerical capacity, such as accounting or bookkeeping shall not be considered as acceptable experience. Experience in narrow technical capacities, such as laboratory technicians or meter readers may be considered for partial credit by the committee of certification and will generally be credited at no more than 50 percent of the actual experience required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002), amended LR 33:

§7327. Renewal and Recertification

A. General. Applications and invoices for renewal of certificates will be transmitted to operators of record in January of the first year in each biennial (two-year) renewal cycle. The biennial renewal cycle runs from January 1 of even-numbered years to December 31 of odd-numbered years. Applications for renewal and payment of invoices shall be considered delinquent as of April 30 of the first year in each biennial renewal cycle, and appropriate late fees shall be assessed thereafter.

B. Renewal Requirements. In order to qualify for renewal of certificates held in any and all categories/subcategories, all operators of water and sewerage works shall enumerate, certify and provide evidence that he/she has attended a minimal number of contact hours of approved operator training for each certificate held during the previous biennial (two-year) renewal cycle period. A

minimum of 16 contact hours is required for renewal of certificates held in either the water category or the wastewater category or eight hours per each subcategory certificate held, whichever is the greater.

1. Should one happen to hold certificates offered in all three subcategories of the water category, a minimum of 24 contact hours is required. Approved training is defined as the completion of any of the training courses listed in §7329 of this Chapter. It is required that course outlines (or lesson plans) for other proposed in-service training be submitted to the operator certification unit for review and approval prior to the proposed date of training.

C. Recertification. Operators for whom certification has been expired in excess of two years are not eligible to renew their certificate(s), and shall be required to reapply for certification under the provisions of this Chapter. In such cases, applicants shall be re-examined and shall demonstrate compliance with appropriate education and experience requirements before any certificates will be issued. In those instances where an operator's certificate has previously been revoked by the state health officer, the committee shall recommend any additional requirements for recertification that are deemed appropriate, and rule on the operator's eligibility to reapply for a certificate.

D. Failure to attend the required training or failure to furnish the required information shall constitute grounds for refusal to renew the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002), amended LR33:

§7329. Training—General

A. Training Courses Available. To be approved for training credit by the Administrator of the Operator Certification Program, the training courses identified in Subsection B of this Section must meet the following general requirements.

1. The administrator must have on file a copy of the course outline of the training course, seminar, workshop, etc. to make his approval decision.

2. Information must include dates, place held, sponsoring organization, speakers/instructors and time (length of subject), and target audience [category/subcategory(s) and levels of certification addressed].

3. No blanket approvals (from year to year) will be given or implied and a separate approval must be given by the operator certification program each time training is given. On doubtful courses, the administrator will bring the matter to the committee of certification for disposition. (An aggrieved applicant may apply for an administrative hearing to be conducted by a panel of the committee of certification.)

4. Operators shall be responsible to assure that the sponsoring organization submits his certified transcript of training credits earned to the administrator.

B. Training courses, short courses, technical sessions, seminars, workshops, etc., recognized by both the committee of certification and the department includes, but are not limited to the following:

1. annual short course of the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes, Inc.;

2. regional conferences of one or more days sponsored and/or co-sponsored by the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes, Inc.;

3. American Water Works Association Annual Conferences, technical sessions, seminars and workshops;

4. National Association of Water Companies Annual Conferences seminars and workshops;

5. Southwest Section, American Water Works Association Annual Conference, technical sessions, seminars and workshops;

6. college or university and vocational-technical sponsored water and/or wastewater courses, as approved by the committee of certification;

7. Water Environment Federation Annual Conference, regional meetings, technical sessions, seminars and workshops;

8. Louisiana Water Environment Association regional meetings, technical sessions, seminars and workshops;

9. Louisiana Rural Water Association, Inc.'s annual training and technical conference, regional meetings, technical sessions, seminars and workshops;

10. Louisiana Environmental Training Center, at University of Louisiana at Lafayette, training courses, technical sessions, seminars and workshops;

11. regional meetings, technical sessions, seminars, workshops and/or training programs, sponsored and/or co-sponsored by the Department of Health and Hospitals, or the Department of Environmental Quality;

12. water and/or wastewater operator training courses approved for certification examinations by the committee of certification; and

13. short schools, technical courses, seminars, workshops and training programs sponsored by other states.

C. A water and/or wastewater organization or utility not listed above may apply to the committee of certification for recognition and approval to conduct a training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002), amended LR 33:

§7331. Examinations in Conjunction with Training Courses

A. Applicants for approved training courses may request that certification exams be conducted following the completion of the course. In order to obtain approval from the committee of certification, the applicant (sponsoring individual or organization) must comply with the requirements and rules of this Section.

B. Applications for conducting certification exams must be submitted to:

Administrator, Operator Certification Program
Louisiana Department of Health and Hospitals
Office of Public Health
CEHS Mail Bin # 6
P.O. Box 4489, Baton Rouge, LA 70821-4489

C. Applications for conducting certification exams must be submitted 30 days prior to the beginning of the course.

D. No certification exam shall be conducted without prior written approval from the administrator.

E. Blanket approval for training courses and exams will not be given by the committee of certification, i.e., each

training course and each exam period must be approved according to the requirements of this Section.

F. No exam shall be approved to follow a training course consisting of less than 32 hours.

G. Approval will be given to conduct exams only for the classes and categories covered by the training course, *i.e.*, for training in Class I, II, III or IV in water production, treatment or distribution, or wastewater collection or treatment, or Class V training for a Senior Operator designation.

H. The classes and categories for which the course is designed must be stated in the application.

I. The applicant must submit a detailed course outline to include:

1. the goal of the training course;
2. the particular categories of certification in water and/or wastewater for which the course is designed;
3. each subject to be covered;
4. a formal lesson plan for each subject area to be covered;
5. the number of hours covered in each subject;
6. what references will be supplied in the course; and,
7. what references and materials the student should bring to the course.

J. The applicant must submit the names of all instructors, and their qualifications, including their education and work experience credentials and their certification levels. Instructors shall possess, at a minimum, a "provisional" certification in the subject area covered; or, shall have completed a qualified instructor training course or equivalent; or, be specifically accepted by the committee based upon their credentials.

K. Only those examinations prepared under the auspices of the administrator and the committee of certification will be recognized for certification.

L. All examinations will be conducted and monitored by members of the staff of the department and/or members of the committee of certification. No exams will be conducted without the presence of a sufficient number of monitors approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002), amended LR 33:

§7333. Fees - General

A.1. All fees shall be paid in the form of a check or money order made payable to the:

Committee of Certification
 CEHS Mail Bin # 6
 P.O. Box 4489, Box 6
 Baton Rouge, LA 70821-4489

2. Exception: Examination fees may be accepted in cash at the site of the examination. A receipt shall be provided to the payer whenever cash is accepted for payment.

B. All fees are assessed on a per person basis.

C. In no case will the total fees paid by private Louisiana-domiciled corporations exceed \$500.

D. The fees stated in this Section shall not apply to an individual who owns an on-site individual wastewater system of 1,500 gallons per day or smaller.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1142(F) and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002), amended LR 33:

§7334. Examination Fees

A. Examination fees are \$5 for each exam.

1. Exception: When water system operator or wastewater system operator training is conducted at a Louisiana university, including but not limited to training for the Class 5 certification level, the following examination fees and provisions shall apply:

- a. fees for each examination are \$25;
- b. pursuant to an agreement reached with the department prior to the beginning of any water system operator or wastewater system operator training to be conducted at a Louisiana university, all or a portion of fees collected at a university may be retained by the university.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1142(F) and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 33:

§7335. Certification/Certificate Fees

A.1. Certificate fees reflect the authorized annual fee assessed on a biennial (two-year) renewal cycle basis. Certification/Certificate fees are follows.

Initial Certification (certificate) in each Subcategory	\$ 20/biennially
Additional Initial Certifications (certificates) in each Subcategory	\$ 10/biennially
Renewal Certification (certificate)	Same as Initial/Additional Cert. (certificate) fees above
Duplicate/Replacement Certificates/IDs	\$ 5
Reciprocal Certificates	Same as Initial/Additional Cert. (certificate) fees above
Late Renewal Fees	Double the Renewal Cert. (certificate) fees above

2. Exception

a. When water system operator or wastewater system operator training is conducted at a Louisiana university, including but not limited to training for the Class 5 certification level, the following certification (certificate) fees and provisions shall apply:

- i. fees for each separate certification (certificate) are \$25;
- ii. pursuant to an agreement reached with the department prior to the beginning of any water system operator or wastewater system operator training to be conducted at a Louisiana university, all or a portion of fees collected at a university may be retained by the university.

B. Renewal fees shall be considered late if received after April 30 of the first year (even-numbered year) of the biennial renewal cycle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1142(F) and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002), amended LR 33:

§7337. Reciprocity

A. Reciprocity shall be granted at the discretion of the committee of certification, without examination, to holders

of comparable certificates issued by other states, territories, or possessions of the United States. The applicant for a certificate under the reciprocity clause must submit his application on an official application blank, obtainable from the administrator. The application must be accompanied by the appropriate fee. The applicant must submit a copy of his certificate or other proof, satisfactory to the committee of certification that he holds a certificate issued by a governmental agency of another state, territory or possession of the United States. Such certificates must have been received after passage of an examination at least equivalent to that given by the Louisiana committee of certification for the level of competency for which application is made.

B. The burden of proof to submit sufficient information for the committee of certification's consideration shall be upon the applicant. If, after receiving such an application, the committee of certification is satisfied that the applicant qualifies for a certificate, it may, at its discretion award him a certificate in the appropriate grade. A reciprocal certificate will not ordinarily be issued unless the applicant is employed, has accepted employment, or at a minimum has applied for employment at a Louisiana water or wastewater facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002), amended LR 33:

§7339. Notification

A. Failure to receive any notices previously mentioned does not relieve the certificate holder or applicant from complying with the rules of the committee of certification. The burden is upon the certificate holder or applicant to provide the committee of certification with a current mailing address.

B. Any request for applications, training course approvals, reciprocity, etc., and/or questions on operator certification should be addressed to:

Administrator, Operator Certification Program
DHH-OPH
CEHS Mail Bin # 6
P.O. Box 4489, Box 6
Baton Rouge, LA 70821-4489.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002), amended LR 33:

Part XIII. Sewage Disposal

Chapter 3. General Requirements for Sewerage Disposal

[formerly Chapter 13 Subpart B]

§303. Responsible Parties

[formerly paragraph 13:003]

A. A person who owns, operates, manages, or otherwise controls any premises, shall provide for sewage disposal in a manner which is in compliance with this Code.

B. All sewerage systems shall be under the supervision and control of a duly certified operator in accord with the requirements of the State Operator Certification Act [Act 538 of 1972, as amended (R.S. 40:1141-1151)] and LAC 48:Chapter 73. Exception: The operator of an individual sewerage system having a treatment capacity of 1,500

gallons per day or less which is used in a residential application shall not be required to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(6), R.S. 40:5(9)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002), amended LR 33:

Family Impact Statement

1. The Effect on the Stability of the Family. When compliance with these code requirements are achieved, the likelihood of a family member becoming ill via transmission of a water-borne disease is lessened. Keeping family members healthy and productive will assist in maintaining the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. No known impact.

3. The Effect on the Functioning of the Family. When compliance with these code requirements are achieved, the likelihood of a family member becoming ill via transmission of a water-borne disease is lessened. Keeping family members healthy and productive will assist in maintaining the smooth functioning of the family.

4. The Effect on Family Earnings and Family Budget. For those families in which a family member currently holds either a Class 1 or Class 2 water treatment certificate and is employed by an affected water supply system, upon compliance with the changes proposed in the rule, the family earnings should increase based upon the average pay to the operators presently holding Class 3 water treatment positions. In general, families which are connected to those water supply systems affected by the proposed rule may be asked to pay a small increase in their water bill to cover the costs associated with compliance.

5. The Effect on the Behavior and Personal Responsibility of Children. No known impact.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The ability of the family or local government to perform the function as contained in the proposed rule will be minor since the existing rule presently covers many of the same requirements. The proposal will require an upgrade in the Class (or level) of water treatment certificate held by operators of affected water supply systems. Normally, this will involve a period of study or training followed by an examination.

DHH-OPH will conduct a public hearing at 1:30 p.m. on Tuesday, September 25, 2007, in Room 118 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets. (cater-corner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Friday, September 28, 2007 at COB, 4:30 p.m., and should be addressed to Ms. Stacy Williams, Administrator, Operator Certification Unit, Engineering Services Section, Center for Environmental

Health Services, Office of Public Health, CEHS Mail Bin # 6, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7494. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street, Room 121-24, Baton Rouge, LA 70802.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Water and Wastewater Operator
Certification and Sewage Disposal**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to require a minimum Class 3 Water Treatment Certificate for operators who work at: 1) water supply systems using surface water or ground water under the direct influence of surface water as its source of water supply in the production of potable water and 2) water supply systems using groundwater as its source of water supply and two or more mechanical units and/or chemical feed units in the production of potable water. The rule also provides language to clarify the on-site requirement of water treatment operators and addresses the method for the collection of certification fees and the optional Class 5 Level of certification. Additionally, the rule incorporates, by reference into the State Sanitary Code, the requirement that sewerage systems be under the supervision and control of certified wastewater operators.

DHH-Office of Public Health will incur an expense of approximately \$1,020 in FY07/08 to have the Notice of Intent and final rule published in the Louisiana Register. The agency has sufficient self-generated revenues to cover this cost.

In addition, the Class 3 Water Treatment rule changes could affect 181 water supply systems that are owned by state or local governments (179 local and 2 state). The affected entities could incur costs for salary pay changes, testing, and certification fees to upgrade water treatment operators to a Class 3. Salary costs cannot be determined because pay structures vary from system to system. The cost to upgrade an operator to a Class 3 is approximately \$135 (includes study materials and the cost of exams and certificates). DHH is actively working to re-establish EPA's Reimbursement Grant program to assist small water systems (serving less than 3,300 persons) in paying for training and other expenses related to achieving up to a Class 2 certification. Systems will be given three years to comply.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Adoption of the proposed amendments relative to the Class 3 operator certification is expected to affect 577 public water systems (179 local, 2 state, 2 federal, 394 private). These are water supply systems that serve a population of 5,000 or less.

It is anticipated that implementation of this proposed rule will increase Fees and Self-Generated collections for OPH by approximately \$7,000 in FY 07/08 (based on 200 operators achieving Class 3), \$11,445 in FY 08/09 (based on 327 operators achieving Class 3), and \$1,750 in FY 09/10 (based on 50 operators achieving Class 3). These collections are based on each system upgrading one operator, at the rate of \$5 per exam and an average cost of \$30 per applicant for the issuance of certificates.

The state or local governmental units that own the water supply systems affected by these rule changes may determine the need to increase the revenue collections (i.e., increase water bills) to cover any increased costs of complying with the proposed operator certification rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is estimated that the 394 privately owned water systems and the 2 federal owned water systems will also incur the same costs as the state and local owned water supply systems to upgrade operators to a Class 3. For privately owned and non-governmentally owned systems, the Public Service Commission determines the amount of any rate increases based on the business plan submitted by the water or wastewater system.

Class 1 or Class 2 Water Treatment operators who achieve a Class 3 Water Treatment certificate could benefit economically because of a higher salary.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Affected individuals will possess a higher-level professional license, which could open employment opportunities both within the state as well as within other states that have reciprocal agreements with Louisiana. Upon adoption of this rule, there may be an initial shortage of Class 3 operators based upon the number of systems this rule will affect.

Sharon G. Howard
Assistant Secretary
0708#099

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Personal Care Attendant Services
Licensing Standards
(LAC 48:I.7701-7785)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.7701-7785 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2120.1-7 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification adopted provisions governing the licensing of personal care attendant services (*Louisiana Register*, Volume 13, Number 4). The Department of Social Services, Office of the Secretary, Bureau of Licensing amended the provisions governing licensure fees (*Louisiana Register*, Volume 25, Number 12). Act 483 of the 2005 Regular Session of the Louisiana Legislature transferred the authority to license these services from the Department of Social Services to the Department of Health and Hospitals. The Department of Health and Hospitals, Office of the Secretary, Bureau of

Health Services Financing now proposes to amend the provisions of the April 20, 1987 and December 20, 1999 rules.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 77. Personal Care Attendant Services

§7701. Personal Care Attendant Services

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7703. Responsibility for Care Planning

A. - A.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7705. Qualification of Team Members

A. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7707. Basic Activities

A. - A.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7709. Initial Application Process

A. All Personal Care Attendant Services Providers (PCASP) shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for direct service providers in the state of Louisiana. It shall be unlawful to operate a PCASP agency without DHH licensure.

B. An application packet for licensing as a PCASP shall be obtained from the department. A completed application packet for the PCASP shall be submitted to and approved by the department prior to an applicant providing services.

C. A separately licensed PCASP shall not use a doing business as (DBA) name which is the same as the name of another PCASP licensed by the department.

D. An initial applicant shall submit a completed licensing packet including:

1. a licensing application with accompanying non-refundable fee;
2. a disclosure of ownership;
3. approval of the premises from the Office of the State Fire Marshal;

4. a health inspection certification of the premises from the Office of Public Health;

5. a zoning approval from local governmental authorities;

6. a criminal background check on all owners unless the owner holds a professional license issued by a state licensing board;

7. verification of sufficient assets equal to \$100,000 or the cost of three months of operation, whichever is less, or a letter of credit equal to \$100,000 or the cost of three months of operation, whichever is less;

8. proof of financial viability; and

9. an organizational chart with the names and position titles of persons currently employed.

E. If the applicant fails to submit a completed licensing packet within 90 days of the date the initial application is received, the application shall be closed. In order to start the process again, the applicant must submit a new packet and initial licensing fee.

F. Once an applicant is notified in writing by the department that their application is approved, they must contact the department within 30 days from the date of the notice to schedule an initial survey. Failure to do so shall result in the application being denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7711. Surveys

A. Upon approval of the initial application by the department, the applicant will receive a letter so they may operate temporarily pending an initial licensure survey to determine if the PCASP is in compliance with all licensing regulations. Prior to scheduling and approval of the initial survey, applicants must be fully operational, in compliance with all licensing standards and providing care to only one client at the time of the initial survey. The PCASP shall notify the department at the time that services are initiated for the client and must provide the client with the department's toll free complaint line number.

B. In the event the initial licensing survey reveals that a PCASP is non-compliant with regulations and it is determined that the non-compliance poses a threat to the health and safety of a client, the department shall deny the initial license. The PCASP shall transfer the one client and close immediately.

C. The department shall conduct a licensing survey at intervals as it deems necessary to determine compliance with licensing regulations. These surveys shall be unannounced.

D. The department shall conduct a complaint investigation for a complaint received against a PCASP. A complaint survey shall be unannounced.

E. A PCASP shall make any information which the PCASP is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to representatives of the department.

F. If a deficient practice is cited during any licensing or complaint survey, the PCASP must submit a plan of

correction and a follow-up survey may be conducted to ensure correction of the deficient practice(s).

G. Sanctions may be imposed by the department for violation of any state or federal statute, regulation or rule governing health care services as authorized by R.S. 40:2199.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7713. Issuance of License

A. The department shall have authority to issue the following types of licenses.

1. A full license may be issued only to applicants that are in substantial compliance with all applicable federal, state, and local laws, regulations and rules. The license shall be valid until the expiration date shown on the license unless the department determines otherwise.

2. A provisional license may be issued to those existing licensed PCASP's which do not meet the criteria for full licensure. A provisional license shall be valid for not more than six months.

a. A PCASP with a provisional license may be issued a full license if, at the follow-up survey, the PCASP has corrected the deficient practice(s). A full license will be issued for the remainder of the year until the PCASP's license anniversary date.

b. The department may re-issue a provisional license or initiate a revocation of a provisional license when the PCASP fails to correct deficient practice(s) within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by the department for the following reasons including, but not limited to:

i. the PCASP has more than five deficient practices during any one survey or the scope and severity of any deficiency cited places person(s) receiving services at risk for more than minimal harm;

ii. the PCASP has more than three valid complaints during a one-year period;

iii. there is a documented incident placing a client at risk; or

iv. the PCASP fails to correct deficient practices within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

B. The license shall be posted in a conspicuous place on the premises.

C. A license shall be valid only for the PCASP to which it is issued and only for that specific geographic business address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.

D. Any change regarding the PCASP's name, geographical or mailing address, telephone number, operational hours, key administrative staff or any combination thereof must be reported in writing to the Health Standards Section within five working days of the change. Any change which requires a change in the license shall be accompanied by a \$25 dollar fee. A request for a duplicate license shall be accompanied by a \$25 dollar fee.

E. When a change of ownership (CHOW) occurs, the PCASP shall notify the Health Standards Section in writing at least 15 days prior to the effective date of the CHOW. A copy of the legal document showing the transfer of ownership shall be provided to Health Standards at least five working days prior to the effective date of the CHOW. The license of a PCASP is not transferable to any other PCASP or individual. A license cannot be sold. The new owner must submit all documents required for a new license including the licensing fee.

F. A license renewal fee must be submitted annually to the Department prior to the expiration of the license.

G. A PCASP that is under license revocation or has surrendered their license may not undergo a change of ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7715. Types of Licenses and Expiration Dates

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7717. Reapplication

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7719. The Denial, Revocation or Non-Renewal of a License

A. The department may deny an application for a license, refuse to renew a license or revoke a license in accordance with the provisions of the Administrative Procedures Act. There shall be no appeal if the license has expired.

B. A PCASP's license may not be renewed or may be revoked for any of the following reasons including, but not limited to:

1. failure to be in substantial compliance with the PCASP licensing regulations;

2. failure to uphold client rights whereby deficient practice may result in harm, injury, or death of a client;

3. failure to protect a client from a harmful act of an employee including, but not limited to:

a. abuse, neglect, exploitation, and extortion;

b. an action posing a threat to a client or public health and safety;

c. coercion;

d. threat;

- e. intimidation; or
 - f. harassment;
4. failure to follow federal or state law regarding notification of all suspected cases of neglect, criminal activity or mental or physical abuse, or any combination thereof;
5. knowingly making a false statement in any of the following:
- a. application for licensure;
 - b. data forms;
 - c. clinical records;
 - d. matters under investigation by the department or Attorney General's office; or
 - e. information or billing submitted for reimbursement from any payment source;
6. the use of false, fraudulent or misleading advertising;
7. an owner or administrator pleading guilty or nolo contendere to a felony, or being convicted of a felony as documented by a certified copy of the court record. If the applicant is a firm or corporation, a license may also be immediately denied or revoked when any of its members, officers or the person designated to manage or supervise client care is convicted of a felony. For purposes of this paragraph, conviction of a felony means and includes:
- a. conviction of a criminal offense related to that person's involvement in any program under Medicaid or a Title XIX services program since the inception of these programs;
 - b. conviction of a felony relating to violence, abuse, and/or neglect of a person; or
 - c. conviction of a felony related to the misappropriation of property belonging to another person;
8. failure to comply with all reporting requirements in a timely manner as requested by the department;
9. documented evidence that the PCASP or any representative thereof has offered or received a bribe, harassed, solicited or received anything of economic value for the referral of any individual to use the services of any particular PCASP; or
10. non-operational status.

C. In the event a license is revoked, denied renewal or voluntarily surrendered, no other Personal Care, Respite, Supported Independent Living, Adult Day Care or Family Support service license application shall be accepted by the department from the owners of the revoked or denied agency for review and approval for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7720. Notice and Appeal

A. Notice of the department's actions against the PCASP shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. A PCASP may request an administrative reconsideration of a deficiency which is the basis of the department's action. An administrative reconsideration is an informal process

conducted by a designated department official who did not participate in the initial decision to impose the adverse action. An administrative reconsideration shall be made solely on the basis of documents or oral presentations, or both, before the designated official and shall include the survey report, a statement of deficiency and any documentation the service provider may submit to the department when requesting the reconsideration. Correction of a deficiency shall not be a basis for reconsideration and an administrative reconsideration hearing may be held. A department spokesman and a PCASP services spokesman may make an oral presentation to the designated official during the administrative reconsideration. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of the Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part, or to request additional information from either the department or the PCASP.

C. Administrative Appeal Process. Upon denial or revocation of a license, or imposition of a fine by the department, the provider shall have the right to appeal such action by submitting a written request to the Bureau of Appeals within 30 days after receipt of the notification of the denial, revocation of a license or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7721. Terms of the Licensure

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7723. Services for Different Handicaps

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7725. Quarterly Staffing Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7727. Licensing Inspections

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7729. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care

A. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7731. General Waiver

A. The department shall have the authority to waive any of those standards which are inapplicable to the type of service to be rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7733. Personal Care Attendant Services

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7735. General Requirements

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7736. Operational Requirements

A. In order to be considered operational and retain licensed status the provider must have at least one employee on duty at the business location a minimum of eight hours a day Monday through Friday. There must be direct care staff employed and available to be assigned to provide care and services to persons receiving services at all times. Staff must be designated to receive calls after business hours (including weekends and holidays) on a telephone owned by the business 24 hours per day, seven days a week within the region in which the provider is located.

B. Office Space. The PCASP's office shall be the physical site where the agency maintains staff to perform administrative functions, maintains personnel records, maintains client service records and holds itself out to the public as being a location of business for receipt of client referrals and provision of client services. The office shall have a separate entrance and exit from any other entity, business or trade. If office space is shared with another health related entity, the PCASP must operate independently and have a clearly defined scope of services.

C. Office space must meet the following requirements:

1. be in commercial office space, or if located in a residential area, it must be zoned for business and must be used solely for the operation of the business (may not be the personal residence of the business owner or any other individual);

2. comply with guidelines set forth by the Louisiana Office of the State Fire Marshal;

3. have a business telephone number that is accessible to persons receiving services 24 hours a day, seven days a week;

4. have a business fax number that is operational 24 hours a day, seven days a week;

5. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7737. Governing Body

A. - A.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7739. Responsibilities of a Governing Body

A. - A.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7741. Accessibility of Executive

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7743. Documentation of Authority to Operate

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7745. Administrative File

A. - A.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7747. Organizational Communication

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7749. Accounting

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7751. Confidentiality and Security of Files

A. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7753. Administrative and Client Records

A. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7755. Program Description

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7757. Transportation

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7759. External Professional Service

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7761. Personnel Policies

A. A PCASP shall have written personnel policies and procedures that include, but are not limited to:

1. a plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation;

2. written job descriptions for each staff position, including volunteers;

3. a health assessment, to include at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated the Office of Public Health;

4. criminal history background checks for all unlicensed personnel which include a security check of the National Sex Offender Public Registry;

5. an employee grievance procedure;

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

7. prevention of discrimination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7763. Nondiscrimination

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7765. Recruitment

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7767. Screening

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7769. Orientation

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987),

repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7771. Training

A. All non-licensed personal care attendant services direct care staff must meet minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 or a subsequently amended statute and be registered on the Louisiana Direct Service Worker Registry.

B. A provider shall ensure that each direct service worker completes no less than 16 hours of face to face training per year to ensure continuing competence. The training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing, LR 33:

§7772. Required Staffing

A. The provider shall be staffed at all times in sufficient numbers to properly safeguard the health, safety and welfare of the persons receiving services. Sufficient support staff shall be employed to ensure provision of personal care services as required by the comprehensive plan of care. There shall be back-up staff available to ensure that services to the client are uninterrupted in the event that the primary direct care worker for the client is unable to report to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7773. Evaluation

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7775. Personnel Practices

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7777. Abuse Reporting

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7779. Basic Rights

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7781. Self-Advocacy

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7783. Advocacy

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7785. Grievance Procedures for Clients

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Personal Care Attendant Services
Licensing Standards**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 07-08. It is anticipated that \$2,380 (\$1,190 SGF and \$1,190 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 07-08. It is anticipated that \$1,190 will be collected in FY 07-08 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This rule proposes to amend provisions governing the licensing of personal care attendant services providers (approximately 1,200 providers) to clarify current licensing standards. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 07-08, FY 08-09, and FY 09-10.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This rule has no known impact on competition and employment.

Jerry Phillips
Director
0708#094

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Respite Care—Licensing Standards
(LAC 48:I.8101-8167)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.8101-8167 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2120.1-7 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification adopted provisions governing the licensing of respite care services providers (*Louisiana Register*, Volume 13, Number 4). The Department of Social Services, Office of the Secretary, Bureau of Licensing amended the provisions governing licensure fees (*Louisiana Register*, Volume 25, Number 12). Act 483 of the 2005 Regular Session of the Louisiana Legislature transferred the authority to license these services from the Department of Social Services to the

Department of Health and Hospitals. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing now proposes to amend the provisions of the April 20, 1987 and December 20, 1999 Rules.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 81. Respite Care

§8801. Initial Application Process

A. All respite care services providers (RCSP) shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for direct service providers in the State of Louisiana. It shall be unlawful to operate an RCSP agency without DHH licensure.

B. An application packet for licensing as an RCSP shall be obtained from the department. A completed application packet for the RCSP shall be submitted to and approved by the department prior to an applicant providing services.

C. A separately licensed RCSP shall not use a doing business as (DBA) name which is the same as the name of another RCSP licensed by the department.

D. An initial applicant shall submit a completed licensing packet including:

1. a licensing application with accompanying non-refundable fee;
2. a disclosure of ownership;
3. approval of the premises from the Office of the State Fire Marshal;
4. a health inspection certification of the premises from the Office of Public Health;
5. a zoning approval from local governmental authorities;
6. a criminal background check on all owners unless the owner holds a professional license issued by a state licensing board;
7. verification of sufficient assets equal to \$100,000 or the cost of three months of operation, whichever is less, or a letter of credit equal to \$100,000 or the cost of three months of operation, whichever is less;
8. proof of financial viability; and
9. an organizational chart with the names and position titles of persons currently employed.

E. If the applicant fails to submit a completed licensing packet within 90 days of the date the initial application is received, the application shall be closed. In order to start the process again, the applicant must submit a new packet and initial licensing fee.

F. Once an applicant is notified in writing by the department that their application is approved, they must contact the department within 30 days from the date of the notice to schedule an initial survey. Failure to do so shall result in the application being denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8103. Review of Applications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8104. Surveys

A. Upon approval of the initial application by the department, the applicant will receive a letter so they may operate temporarily pending an initial licensure survey to determine if the RCSP is in compliance with all licensing regulations. Prior to scheduling and approval of the initial survey, applicants must be fully operational, in compliance with all licensing standards and providing care to only one client at the time of the initial survey. The RCSP shall notify the department at the time that services are initiated for the client and must provide the client with the department's toll free complaint line number.

B. In the event the initial licensing survey reveals that a RCSP is non-compliant with regulations and it is determined that the non-compliance poses a threat to the health and safety of a client, the department shall deny the initial license. The RCSP shall transfer the one client and close immediately.

C. The department shall conduct a licensing survey at intervals as it deems necessary to determine compliance with licensing regulations. These surveys shall be unannounced.

D. The department shall conduct a complaint investigation for a complaint received against an RCSP. A complaint survey shall be unannounced.

E. An RCSP shall make any information which the RCSP is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to representatives of DHH.

F. If a deficient practice is cited during any licensing or complaint survey, the RCSP must submit a plan of correction and a follow-up survey may be conducted to ensure correction of the deficient practice(s).

G. Sanctions may be imposed by the department for violation of any state or federal statute, regulation or rule governing health care services as authorized by R.S. 40:2199.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8105. Issuance of a License

A. The department shall have authority to issue the following types of licenses.

1. A full license may be issued only to applicants that are in substantial compliance with all applicable federal, state, local laws, regulations and rules. The license shall be valid until the expiration date shown on the license unless the department determines otherwise.

2. A provisional license may be issued to those existing licensed RCSP which do not meet the criteria for full licensure. A provisional license shall be valid for not more than six months.

a. An RCSP with a provisional license may be issued a full license if, at the follow-up survey, the RCSP has corrected the deficient practice(s). A full license will be issued for the remainder of the year until the RCSP's license anniversary date.

b. The department may re-issue a provisional license or initiate a revocation of a provisional license when the RCSP fails to correct deficient practice(s) within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by the department for the following reasons including, but not limited to:

i. the RCSP has more than five deficient practices during any one survey or the scope and severity of any deficiency cited places person(s) receiving services at risk for more than minimal harm;

ii. the RCSP has more than three valid complaints during a one-year period;

iii. there is a documented incident placing a client at risk; or

iv. the RCSP fails to correct deficient practices within 60 days of being cited or at the time of the follow-up survey, whichever occurs first.

B. The license shall be posted in a conspicuous place on the premises.

C. A license shall be valid only for the RCSP to which it is issued and only for that specific geographic business address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.

D. Any change regarding the RCSP's name, geographical or mailing address, telephone number, operational hours or key administrative staff or any combination thereof, must be reported in writing to the Health Standards Section within five working days of the change. Any change which requires a change in the license shall be accompanied by a \$25 fee. A request for a duplicate license shall be accompanied by a \$25 fee.

E. When a change of ownership (CHOW) occurs, the RCSP shall notify the Health Standards Section in writing at least 15 days prior to the effective date of the CHOW. A copy of the legal document showing the transfer of ownership shall be provided to Health Standards at least five working days prior to the effective date of the CHOW. The license of an RCSP is not transferable to any other RCSP or individual. A license cannot be sold. The new owner must submit all documents required for a new license including the licensing fee.

F. A license renewal fee must be submitted annually to the department prior to the expiration of the license.

G. An RCSP that is under license revocation or has voluntarily surrendered their license may not undergo a change of ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8107. Types of Licenses and Expiration Dates

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:24621 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8109. Reapplication

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:2461 (December 1999), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8111. The Denial, Revocation, or Non-Renewal of a License

A. The department may deny an application for a license, refuse to renew a license or revoke a license in accordance with the provisions of the Administrative Procedures Act. There shall be no appeal if the license has expired.

B. An RCSP's license may not be renewed or may be revoked for any of the following reasons including, but not limited to:

1. failure to be in substantial compliance with the RCSP licensing regulations;
2. failure to uphold client rights whereby deficient practice may result in harm, injury or death of a client;
3. failure to protect a client from a harmful act of an employee including, but not limited to:
 - a. abuse, neglect, exploitation and extortion;
 - b. an action posing a threat to a client or public health and safety;
 - c. coercion;
 - d. threat;
 - e. intimidation; or
 - f. harassment;
4. failure to follow federal or state law regarding notification of all suspected cases of neglect, criminal activity, or mental or physical abuse, or any combination thereof;
5. knowingly making a false statement in any of the following:
 - a. application for licensure;
 - b. data forms;
 - c. clinical records;
 - d. matters under investigation by the department or Attorney General's office; or
 - e. information or billing submitted for reimbursement from any payment source;
6. the use of false, fraudulent or misleading advertising;
7. an owner or administrator pleading guilty or nolo contendere to a felony or being convicted of a felony as documented by a certified copy of the court record. If the applicant is a firm or corporation, a license may also be immediately denied or revoked when any of its members, officers, or the person designated to manage or supervise

client care is convicted of a felony. For purposes of this Paragraph, conviction of a felony means and includes:

- a. conviction of a criminal offense related to that person's involvement in any program under Medicaid or a Title XIX services program since the inception of these programs;
- b. conviction of a felony relating to violence, abuse, and/or neglect of a person; or
- c. conviction of a felony related to the misappropriation of property belonging to another person;
8. failure to comply with all reporting requirements in a timely manner as requested by the department;
9. documented evidence that the RCSP or any representative thereof has offered or received a bribe, harassed, solicited or received anything of economic value for the referral of any individual to use the services of any particular RCSP; or
10. non-operational status.

C. In the event a license is revoked or denied renewal or voluntarily surrendered their license, no other Personal Care Assistant, Respite, Supervised Independent Living, Adult Day Care or Family Support service license application shall be accepted by the department from the owners of the revoked or denied agency for review and approval for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8112. Notice and Appeal

A. Notice of the department's actions against the RCSP shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. An RCSP may request an administrative reconsideration of a deficiency which is the basis of the department's action. An administrative reconsideration is an informal process conducted by a designated department official who did not participate in the initial decision to impose the adverse action. An administrative reconsideration shall be made solely on the basis of documents or oral presentations, or both, before the designated official and shall include the survey report, a statement of deficiency and any documentation the service provider may submit to the department when requesting the reconsideration. Correction of a deficiency shall not be a basis for reconsideration and an administrative reconsideration hearing may be held. A department spokesman and an RCSP services spokesman may make an oral presentation to the designated official during the administrative reconsideration. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part or to request additional information from either the department or the RCSP.

C. Administrative Appeal Process. Upon denial or revocation of a license or imposition of a fine by the

department, the provider shall have the right to appeal such action by submitting a written request to the Bureau of Appeals within 30 days after receipt of the notification of the denial, revocation of a license, or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8113. Terms of the License

A. Licenses in Louisiana specify the service which the provider is licensed to provide, the maximum number of clients which the provider may serve at one time, the ages which may be served and the types of handicapping conditions which may be served. These terms must be continuously met by the provider; failure to do so is grounds for revocation of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8115. Services for Different Handicaps

A. A provider will not be licensed to serve more than one program office type of handicapped client until the provider has been in operation and has consistently met applicable requirements for one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8117. Quarterly Staffing Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8119. Licensing Inspections

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8121. New Construction, Renovations of Existing Facilities and Conversion of Any Residential or Commercial Building for Residential Care

A. The building site shall be approved by the Division of Licensing and Certification prior to beginning of any construction. The site shall have good drainage and not subject to flooding. The site shall not be located in an area that would present a hazard to those being served. Plans and specifications must be prepared by a licensed architect or engineer. Three sets of complete plans and specifications must be submitted for approval to the Division of Licensing

and Certification. The Division of Licensing and Certification will forward one set to the Office of Preventive and Public Health Services, and one set to the Office of State Fire Marshal.

B. The third set will be reviewed by the Division of Licensing and Certification and the Division of Engineering and Consulting Services. All three agencies must issue an approval of the plans and specifications prior to beginning construction. The Division of Licensing and Certification will issue the letter authorizing the start of construction after receiving approval from the Office of Preventive and Public Health Services, the Office of State Fire Marshal, and the Division of Engineering and Consulting Services.

C. The Division of Licensing and Certification, the Office of Preventive and Public Health Services, and the Office of State Fire Marshal, shall have the authority to inspect the project at any stage to insure that the approved plans and specification are being followed. Final approval of the building must be obtained from these agencies after the building is completed and before it is occupied. A license shall issued by the Division of Licensing and Certification only after these final approvals have been obtained.

D. It shall be the responsibility of the provider to obtain any approvals from local authorities (such as zoning, building, fire, etc.) that may be needed in the particular city or parish.

E. All providers must be in conformity with the ASNI standards for the handicapped.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8123. General Waiver

A. The department shall have the authority to waive any of those standards which are inapplicable to the type of service to be rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8125. Respite Care Services

A. In addition to core requirements, respite care service providers are required to meet the requirements in the respite care service module. Some core requirements may be excepted. Non-programmatic standards do not apply to in-home respite care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8127. General Requirements

A. General Requirements

1. A provider shall allow designated representatives of DHHR in the performance of their mandated duties to inspect all aspects of a provider's functioning which impact

on clients and to interview any staff member or client (if the client agrees to said interview).

a. A provider shall make any information which the provider is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to DHHR.

B. Governing Body

1. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the program/agency.

a. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership; and officers of the governing body; and terms of office of any officers.

b. When the governing body of a provider is comprised of more than one person, the governing body shall hold formal meetings at least twice a year.

c. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body, and by-laws specifying frequency of meetings and quorum requirements.

C. Responsibilities of a Governing Body

1. The governing body of a provider shall:

a. ensure the provider's compliance and conformity with the provider's charter;

b. ensure the provider's continual compliance and conformity with all relevant federal, state, local, and municipal laws and regulations;

c. ensure that the provider is adequately funded and fiscally sound;

d. review and approve the provider's annual budget;

e. ensure the review and approval of an annual external audit;

f. designate a person to act as chief administrator and delegate sufficient authority to this person to manage the provider;

g. formulate and annually review, in consultation with the chief administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices job descriptions and fiscal management;

h. annually evaluate the chief administrator's performance;

i. have the authority to dismiss the chief administrator;

j. meet with designated representatives of DHHR whenever required to do so;

k. inform designated representatives of DHHR prior to initiating any substantial changes in the services provided by the provider.

D. Accessibility of Executive

1. The chief administrator or a person authorized to act on behalf of the chief administrator shall be accessible to staff or designated representatives of DHHR at all times.

E. Documentation of Authority to Operate

1. A private provider shall have documentation of its authority to operate under state law.

F. Administrative File

1. A provider shall have an administrative file including:

a. documents identifying the governing body;

b. list of members and officers of the governing body and their addresses and terms of membership;

c. minutes of formal meetings and by-laws of the governing body, if applicable;

d. documentation of the provider's authority to operate under state law;

e. organizational chart of the provider;

f. all leases, contracts and purchase-of-service agreements to which the provider is a party;

g. insurance policies;

h. annual budgets and audit reports;

i. master list of all providers used by the provider.

G. Organizational Communication

1. A provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the client.

2. Any direct care employee of a provider shall have access to information from clients case records that is necessary for effective performance of the employee's assigned tasks.

3. A provider shall establish procedures which facilitates participation and feedback from staff, clients, families, and when appropriate, the community at large. This will be used in areas such as policy-making, planning and program development.

H. Accounting

1. A provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records in keeping with generally accepted accounting principles.

2. A provider shall demonstrate fiscal accountability through regular recording of its finances and annual external audit.

3. A provider shall not permit public funds to be paid, or committed to be paid, to any person to which any of the members of the governing body, administrative personnel, or members of the immediate families of members of the governing body or administrative personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the facility. The provider shall have a written disclosure of any financial transaction with the facility in which member of the governing body, administrative personnel, or his/her immediate family is involved.

I. Confidentiality and Security of Files

1. A provider shall have written procedures for the maintenance, security, and confidentiality of records. This shall include specifying who shall supervise the maintenance of records, and who shall have custody of records. This procedure shall also state to whom records can be released and the procedure for doing so. Records, including client as well as administrative, shall be the property of the provider and the provider, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. Employees of the provider shall not disclose or knowingly permit the disclosure of any information concerning the agency, the clients or his/her family, directly or indirectly, to any unauthorized person.

3. When the client is of majority age and noninterdicted, a provider shall obtain the client's written, informed permission prior to releasing any information from which the client or his/her family might be identified.

4. When a client is a minor or is interdicted, a provider shall obtain written, informed consent from the legally responsible person prior to releasing any information from which the client or his/her family might be identified.

5. A provider shall, upon request, make available information in the case records to the client, the legally responsible person. If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be damaging to a client, that information (only) may be withheld from the client except under court order. The provider may charge a reasonable fee for providing the above records.

6. A provider may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge or the provider's services, or similar educational purposes, provided that names are deleted, providers which have on-grounds educational programs shall comply with federal and state laws governing educational records.

7. A provider shall not release a personnel file without the employee's written permission except in accordance with state law.

J. Records—Administrative and Client

1. A provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

2. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of in accordance with state laws.

3. A provider shall have sufficient space, facilities and supplies for providing effective record keeping services.

4. A provider shall have a written record for each client which shall include:

a. the name, sex, race, birthdate of the client, address of the client's current place of employment, school, or day provider, as appropriate;

b. other identification date including court status and/or legal status;

c. the names, addresses and phone numbers of other persons or providers involved with the client's plan/case. This shall include the client's physician;

d. a provider shall maintain limited health records including a description of any serious or life threatening medical condition of the client. This shall include a description of any current treatment or medication necessary for the treatment of any serious or life threatening medical condition or known allergies.

5. A provider shall have a written record for each employee which includes:

a. the application for employment and/or résumé;

b. references;

c. any required medical examination;

d. all required documentation of appropriate status which includes:

i. valid driver's license for operating provider vehicles or transporting clients;

ii. professional credentials/certification required to hold the position;

e. periodic, at least annual, performance evaluation;

f. employee's starting and termination dates along with salary paid;

g. employee shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8128. Operational Requirements

A. In order to be considered operational and retain licensed status the provider must have at least one employee on duty at the business location a minimum of eight hours per day Monday through Friday. There must be direct care staff employed and available to be assigned to provide care and services to persons receiving services at all times. Staff must be designated to receive calls after business hours (including weekends and holidays) on a telephone owned by the business 24 hours per day, seven days a week, within the region in which the provider is located.

B. Office Space. The RCSP's office shall be the physical site where the agency maintains staff to perform administrative functions, maintains personnel records, maintains client service records and holds itself out to the public as being a location of business for receipt of client referrals and provision of client services. The office shall have a separate entrance and exit from any other entity, business or trade. If office space is shared with another health related entity, the RCSP must operate independently and have a clearly defined scope of services.

C. Office space must meet the following requirements:

1. be in commercial office space or if located in a residential area, it must be zoned for business and must be used solely for the operation of the business (may not be the personal residence of the business owner or any other individual);

2. comply with guidelines set forth by the Louisiana Office of the State Fire Marshal;

3. have a business telephone number that is accessible to persons receiving services 24 hours a day, seven days a week;

4. have a business fax number that is operational 24 hours a day, seven days a week;

5. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8129. Program and Services

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8130. Required Staffing

A. The provider shall be staffed at all times in sufficient numbers to properly safeguard the health, safety and welfare of the persons receiving services as required by these regulations. Sufficient support staff shall be employed to ensure provision of respite care services as required by the comprehensive plan of care. There shall be back-up staff available to ensure that services to the client are uninterrupted in the event that the primary direct care worker for the client is unable to report to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8131. Personnel Policies

A. A RCSP shall have written personnel policies and procedures that include, but are not limited to:

1. a plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation;

2. written job descriptions for each staff position, including volunteers;

3. a health assessment to include at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated by the Office of Public Health;

4. criminal history background checks for all unlicensed personnel which includes a security check of the National Sex Offender Public Registry;

5. an employee grievance procedure;

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

7. prevention of discrimination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8132. Training

A. All non-licensed respite care services direct care staff must meet minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 or a subsequently amended statute, and be registered on the Louisiana Direct Service Worker Registry.

B. A provider shall ensure that each direct service worker completes no less than 16 hours of face to face training per year to ensure continuing competence. The training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8133. Client Rights

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8135. Individual Service Plan

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8137. Daily Aspects of Care

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8139. Clothing

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8141. Health Aspects of Care

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8143. Food and Nutrition

A. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8145. Money

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8147. Discharge

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8149. Privacy

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8151. Contact with Family and Collaterals

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8153. Participation in Program Development

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8155. Disciplinary Safeguards

A. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8157. Furnishings and Equipment for Center Based Respite Care

A. - A.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8159. Play Space and Equipment

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8161. Health and Safety

A. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8165. Maintenance

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8167. In or Out-of-Home

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.1-7.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Respite Care—Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 07-08. It is anticipated that \$2,244 (\$1,122 SGF and \$1,122 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 07-08. It is

anticipated that \$1,122 will be collected in FY 07-08 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend provisions governing the licensing of respite care services providers (approximately 600 providers) to clarify current licensing standards. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 07-08, FY 08-09, and FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Director
0708#093

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers—Children's
Choice Service Cap Increase(LAC 50:XXI.11301)**

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.11301 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Children's Choice Waiver under the Louisiana Administrative Code (*Louisiana Register*, Volume 28, Number 9). The Children's Choice Waiver provides services with greater flexibility which is appropriate to families who care for children with disabilities. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the Children's Choice Waiver to increase the service cap (*Louisiana Register*, Volume 33, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 20, 2007 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 because it will allow for increased utilization of needed services.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services
Waivers**

Subpart 9. Children's Choice

Chapter 113. Service

§11301. Service Cap

A. Effective May 20, 2007, Children's Choice services are capped at \$17,000 per individual per plan of care year.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Implementation of the provisions of this proposed Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community-Based Services
Waivers—Children's Choice Service Cap Increase**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$451,622 for FY 07-08, \$451,520 for FY 08-09 and \$451,520 for FY 09-10. In FY 07-08, \$204 (\$102 SGF and \$102 FED) is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,148,582 for FY 07-08, \$1,148,480 for FY 08-09 and \$1,148,480 for FY 09-10. In FY 07-08, \$102 is included for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule, which continues the provisions of the May 20, 2007 Emergency Rule, proposes to amend the provisions governing the Children's Choice Waiver to increase the annual service cap on the amount of services each individual may be able to receive (approximately 800 recipients). It is anticipated that implementation of this proposed rule will increase program expenditures in the Children's Choice Waiver program by approximately \$1,600,000 for FY 07-08, \$1,600,000 for FY 08-09 and \$1,600,000 for FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips
Medicaid Director
0708#096

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Office for Citizens with Developmental Disabilities**

**Home and Community Based Services Waivers—New
Opportunities Waiver—Emergency Opportunities
(LAC 50:XXI.13707)**

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.13707 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:95(B)(1) et seq.

The Appropriations Bill of the 2004 Regular Session of the Legislature allocated funds for the establishment of 66 emergency slots for the New Opportunities Waiver (NOW) program and mandated the development and enforcement of Rules established under the Administrative Procedure Act to create an equitable and precise methodology for defining an emergency and the issuance of such slots. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated a Rule that established the provisions governing emergency waiver opportunities. In addition, the bureau repealed the Rules governing programmatic allocation of MR/DD Waiver slots and adopted those provisions to govern the programmatic allocation of waiver opportunities for NOW (*Louisiana Register*, Volume 31, Number 11). The department promulgated an Emergency Rule which amended the provisions of the November 20, 2005 Rule to create an additional 100 emergency waiver opportunities (*Louisiana Register*, Volume 33, Number 3). This proposed Rule is being promulgated to continue the provisions of the March 1, 2007 Emergency Rule.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services
Waivers**

**Subpart 11. New Opportunities Waiver
Chapter 137. General Provisions**

**§13707. Programmatic Allocation of Waiver
Opportunities**

A. - C.6. ...

7. One hundred and sixty-six waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that a waiver opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 166 waiver opportunities are filled, then supports and services based on the priority determination system will be identified and addressed through other resources currently available for individuals with developmental disabilities.

C.8. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have positive impact on family functioning, stability or autonomy as described in R.S. 49:972 as it will allow more qualifying individuals access to NOW services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community Based Services
Waivers—New Opportunities Waiver—Emergency
Opportunities**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state

of \$1,570,694 for FY 07-08, \$1,617,674 for FY 08-09 and \$1,666,205 for FY 09-10. In FY 07-08, \$272 (\$136 SGF and \$136 FED) is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$3,994,985 for FY 07-08, \$4,114,695 for FY 08-09 and \$4,238,135 for FY 09-10. In FY 07-08, \$136 is included for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule, which continues the provisions of the March 1, 2007 Emergency Rule, proposes to amend the provisions governing the New Opportunities Waiver to create an additional 100 emergency waiver opportunities. It is anticipated that implementation of this proposed rule will increase program expenditures in the New Opportunities Waiver Program by approximately \$5,565,407 for FY 07-08, \$5,732,369 for FY 08-09 and \$5,904,340 for FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips
Medicaid Director
0708#095

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers Residential Options Waiver (LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to adopt LAC 50:XXI Chapters 161-169 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals currently provides community-based services to individuals who meet the level of care requirements for institutional placement through five Medicaid home and community-based services (HCBS) waivers, as authorized under §1915(C) of the Social Security Act. The Medicaid HCBS waivers are: the Adult Day Health Care Waiver, Elderly and Disabled Adult Waiver, Children's Choice Waiver, New Opportunities Waiver and Supports Waiver. The Office for Citizens with Developmental Disabilities now proposes to implement a new HCBS waiver, hereafter referred to as the Residential Options Waiver (ROW), to promote independence for individuals with developmental disabilities by strengthening their capacity for self-care, self-sufficiency and community integration through a wide array of services, supports and residential options. The ROW is a service system centered

on the needs and preferences of the waiver recipients and provides an on-going opportunity for them to transition from intermediate care facilities for the mentally retarded (ICFs/MR).

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 13. Residential Options Waiver

Chapter 161. General Provisions

§16101. Introduction

A. The Residential Options Waiver (ROW), a 1915-C waiver, is designed to enhance the long term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for the mentally retarded (ICF/MR) level of care.

B. The goal of the Residential Options Waiver is to promote independence through strengthening the individual's capacity for self-care, self-sufficiency and community integration utilizing a wide array of services, supports and residential options which best meets the individual's needs and preferences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option. This allows for greater flexibility in hiring, training and general service delivery issues.

B. The objectives of the ROW are to:

1. promote independence for recipients through the provision of services meeting the highest standards of quality and national best practices while ensuring health and safety through a comprehensive system of recipient safeguards;

2. offer an alternative to institutional care through the provision of an array of services and supports that promote community living, community inclusion and independence by enhancing, and not replacing, existing informal networks;

3. support recipients and their families in exercising their rights and sharing responsibility for their programs regardless of the method of service delivery; and

4. offer access to services on a short-term basis that would protect the health and safety of the recipient if the family or other care giver were unable to continue to provide care and supervision.

C. All of the services provided in the ROW are accessed through a single point of entry within the Office for Citizens with Developmental Disabilities (OCDD).

D. All services must be prior authorized. Prior authorization is completed through an independent entity contracted by the Department of Health and Hospitals.

E. All services must be delivered in accordance with the approved Individual Support Plan (ISP). The ISP shall be developed using a person-centered process coordinated by the support coordination agency.

1. Waiver recipients choose their support coordination and direct service provider agencies through a Freedom of Choice process.

F. The total expenditures available for each waiver recipient is established through an assessment of individual support needs and will not exceed the approved ICF/MR rate established for that individual.

G. No reimbursement for ROW services shall be made for a recipient who is admitted to an inpatient setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16105. Recipient Qualifications

A. In order to qualify for services through the ROW, an individual must meet the definition for a developmental disability as defined in R.S. 28:451.2(12)(a)(b).

B. The individual must:

1. be a Louisiana resident and a citizen of the United States or a qualified alien;

2. meet the requirements for an ICF/MR level of care which requires active treatment for developmental disabilities under the supervision of a qualified mental retardation professional;

3. meet the financial eligibility requirements for the Medicaid Program as a member of the group of individuals who would be eligible for Medicaid if they:

a. were in a medical institution; or

b. need home and community-based services in order to remain in the community; and

c. have a special income level equal to 300 percent of the Supplemental Security Income (SSI) federal benefit rate; and

C. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16107. Programmatic Allocation of Waiver Opportunities

A. The Request for Services Registry, hereafter referred to as "the registry," shall be used to evaluate individuals for the Residential Options Waiver and to fill all waiver opportunities for persons with developmental disabilities. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated above, and the process continues until an eligible individual is assigned the waiver opportunity. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified.

B. Right of Refusal. An individual may be designated inactive on the registry upon written request to OCDD. When the individual determines that he is ready to begin the waiver evaluation process, he shall request, in writing, that his name be removed from inactive status. His original protected request date will be reinstated.

C. Utilizing the procedures described in subparagraph A, ROW opportunities will be offered with priority given to the individuals in the following groups:

1. participants in the Money Follows the Person Rebalancing Demonstration Grant of 2007 which includes:

a. residents of nursing facilities who have developmental disabilities and whose care is reimbursed at the rates established for infectious disease or technology dependent care;

b. residents of private ICFs/MR who choose to receive home and community-based waiver services and the providers voluntarily closes the licensed, Medicaid enrolled ICF/MR beds vacated by the individuals in order to fund ROW opportunities; and

c. residents of public ICFs/MR who are in licensed Medicaid enrolled beds and have chosen to receive home and community-based waiver services;

2. residents of six bed private ICFs/MR who choose to receive home and community-based waiver services and the providers voluntarily closes the licensed, Medicaid enrolled ICF/MR beds vacated by the individuals in order to fund ROW opportunities;

3. individuals served in the Host Home contracts as identified by OCDD or persons served in existing OCDD Host Home contracts as of the effective date of the ROW; and

4. the remaining opportunities will be allocated equally among the following groups, with any unused opportunities from these groups being equally distributed among the remaining groups:

a. 25 percent will be reserved for crisis diversion for those qualifying individuals who meet the criteria for emergency waiver opportunities;

b. 25 percent will be reserved for individuals with developmental disabilities who reside in nursing facilities and do not meet the criteria in Subparagraph C.1.a.;

c. 25 percent will be reserved for residents of private ICFs/MR, based on their registry protected date and on a first-come, first-served basis; and

d. 25 percent reserved capacity for qualifying individuals who request the ROW, based on their registry protected date and on a first-come, first-served basis.

D. Crisis Diversion or Emergency Waiver Opportunities. Requests for crisis diversion or emergency waiver opportunities shall be made through the regional administrative units (RAU) which are local and regional governmental entities responsible for coordination of services for individuals with developmental disabilities. To be considered for a crisis diversion or emergency waiver opportunity, the individual must need long-term supports, not temporary or short-term supports. All of the following criteria shall be used in the determination of priority for a crisis diversion or emergency waiver opportunity.

1. Urgency of Need. The individual will require further assessment for emergency services if one of the following situations exists:

- a. the caregiver is unable or unwilling to continue providing care;
- b. death of the caregiver and there are no other available supports;
- c. the caregiver is incapacitated and there are no other available supports due to physical or psychological reasons;
- d. intolerable temporary placement and immediate need for new placement; or
- e. other family crisis exists with no caregiver support available.

2. Level of Risk. The individual will be assessed to determine the risk to his health and safety in areas of daily living, health care and behavioral supports if an emergency waiver opportunity is not made available. Level of risk will be categorized as follows:

- a. High Risk. The individual's health or safety is at imminent risk without the requested developmental disability supports.
- b. Moderate Risk. The individual has a potential risk of losing his current level of health or safety without the requested developmental disability supports.
- c. Low Risk. The individual is at little or no risk of losing his current level of health or safety without the requested developmental disability supports.

3. Level of Unmet Needs. The individual's needs shall be identified and assessed to determine the level to which the needs are being met.

4. Adaptive Service Level Determination. The individual's service needs will be determined utilizing a standardized rating based on adaptive behavior levels.

5. Financial Resources Determination. Individual or family income shall be considered to determine whether it is adequate to meet unmet needs.

E. Individuals who enter the ROW and are on the RFSR for the NOW will retain their protected date for the NOW until July 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16109. Discharge Criteria

A. Discharge Criteria. Recipients shall be discharged from the Residential Options Waiver if one of the following criteria is met:

- 1. loss of Medicaid financial eligibility;
- 2. loss of eligibility for an ICF/MR level of care;
- 3. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
- 4. change of residence to another state;
- 5. admission to an ICF/MR or nursing facility with the intent to stay and not to return to waiver services;
- 6. the health and welfare of the waiver recipient cannot be assured in the community through the provision of reasonable amounts of waiver services, i.e., the waiver recipient presents a danger to himself or others;
- 7. failure to cooperate in either the eligibility determination process or the initial or annual implementation of the approved ISP or the responsibilities of the ROW recipient; or

8. continuity of services is interrupted as a result of the recipient not receiving ROW services during a period of 30 consecutive days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Chapter 163. Covered Services

§16301. Assistive Technology

A. Assistive Technology services enable individuals to increase, maintain or improve their ability to function more independently in their home or communities through the use of devices, controls and appliances specified in their ISP. This service also includes service(s) that directly assists recipients in the selection, acquisition, or use of an assistive technology device.

B. Assistive Technology services provided through the ROW includes the following services:

- 1. evaluation of the assistive technology needs of a recipient, including a functional evaluation of the impact of appropriate assistive technology services to the recipient in their customary environment;
- 2. purchase or lease of assistive technology devices for recipients, including adaptation, maintenance and replacement as necessary. This includes battery purchases and other reoccurring replacement items that contribute to ongoing maintenance of these devices;
- 3. coordination and use of necessary therapies, interventions or services with assistive technology devices associated with other services in the ISP;
- 4. training or technical assistance for the recipient, or where appropriate, the recipient's family members, legal guardian or responsible representative in the use and maintenance of devices, controls and appliances;
- 5. training or technical assistance for professionals or other individuals who provide services to, employ, or who are substantially involved in the major life functions of the recipient;
- 6. service contracts and other warranties; and
- 7. repair of all items purchased.

a. Separate payment will be made for repairs after expiration of the warranty when cost effective.

C. Assistive technology equipment covered through ROW may include the following devices:

- 1. assistive devices for individuals who are deaf or hearing impaired including:
 - a. visual alarms;
 - b. telecommunications devices for the deaf (TDDs);
 - c. telephone amplifying devices; and
 - d. other devices for the protection of health and safety;
- 2. assistive devices for individuals who are blind or visually impaired including:
 - a. tape recorders;
 - b. talking calculators;
 - c. magnifiers;
 - d. Braille writers;
 - e. talking computerized devices; and
 - f. other devices for the protection of health and safety;

3. environmental controls including devices to operate appliances, use telephones or open doors;

4. assistive devices for individuals with fine motor limitations including:

a. living and recreational home aides such as reachers, adaptive cooking devices and adapted games.

b. employment or school aides such as book holders, adapted writing devices, page turners and fine motor devices;

5. assistive devices for individuals with sensory processing disorder including multi-sensory devices such as bubble tubes, vestibular swings and tactile boards;

6. control interfaces to assist the person in controlling assistive technology such as keyboards and head and mouth sticks; and

7. other devices, controls, appliances specified in the recipient's ISP which are used to increase, maintain or improve his ability to function more independently in his home or community.

D. All assistive technology items must meet applicable manufacture, design and installation requirements.

E. Service Exclusions. Assistive technology devices that are of general utility or maintenance and have no direct medical or remedial benefit to the individual are excluded from coverage in the ROW.

F. Provider Qualifications. In order to enroll to participate in the Medicaid Program, assistive technology providers must furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16303. Community Living Supports

A. Community living supports (CLS) are services provided to assist individuals with residing successfully in an individual or family home and to help them achieve and maintain the outcomes of increased independence, productivity and inclusion in the community. Utilizing teaching and support strategies, CLS focuses on achieving one or more of the goals outlined in the recipient's approved ISP. These services may be furnished through self-direction or through a licensed, enrolled agency.

B. Community living supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training which is intended to foster community inclusion and well-being, such as involvement in community recreational and leisure activities;

a. CLS providers may provide out-of-home support, community-integration planning (event/location identification and scheduling), transportation, travel training not related to vocational or habilitative services, or other supports needed for socialization skills development.

3. cognitive, communication tasks, adaptive skills which may include homemaker tasks, safety skills,

recognition of basic concepts, academic skills (outside of those skills mandated by the local education agency) and a variety of interpersonal communication objectives; and

a. CLS providers may work collaboratively with natural supports, the support coordinator, habilitation and vocational providers or professional services providers to identify areas that connect with the individual's choice of daily routine.

4. replacement behavior components which include those skills required to effectively address situations and antecedents of frequently occurring maladaptive or challenging behavior;

a. CLS providers may work, as directed by an assigned professional, to assist the person to develop skills necessary to reduce or eliminate episodes in which the individual becomes a danger to self or others.

b. The provider of this service shall provide 24-hour back-up and emergency staff to meet unpredictable needs of recipients in a way that promotes maximum dignity and independence while enhancing supervision, safety and security.

C. Place of Service. CLS services are furnished to adults and children who live in a home that is leased or owned by the recipient or his family. Services may be provided in the home or community, with the place of residence as the primary setting.

D. Community Living Supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. Recipients may share CLS staff when agreed to by the recipients, or their legal guardian, and when the health and welfare of each recipient can be assured.

1. The shared staff must be reflected on the recipients' Individual Support Plans and based on an individual-by-individual determination.

2. A shared rate must be billed when CLS staff is shared.

E. Service Exclusions

1. Staff providing services may not sleep during billable hours of Community Living Supports.

2. Routine care and supervision that is normally provided by the recipient's spouse or family, and services provided to a minor by the child's parent or step-parent, are not covered in the ROW.

3. The recipient may not live in the same home as CLS staff.

4. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered in the ROW.

5. Community living supports shall not be provided in a licensed respite care facility. Providers cannot bill for CLS provided at the same time, on the same day, as respite services are provided.

6. Community living supports services are not available to individuals receiving the following services:

a. shared living conversion;

b. shared living;

c. host home; or

d. companion care.

7. Community living supports cannot be provided at the same time that the recipient is receiving the following services:

- a. day habilitation;
- b. prevocational; or
- c. supported employment.

F. Provider Qualifications. CLS providers must possess a current, valid license as a Personal Care Attendant Agency.

1. Family members who provide CLS services must meet the same standards as providers who are unrelated to the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16305. Companion Care

A. Companion care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion is a principal care provider who provides services in the recipient's home and lives with the recipient as a roommate. Companion care services may be furnished through self-direction or through a licensed provider organization as outlined in the recipient's ISP. This service includes:

- 1. providing assistance with all of the activities of daily living as indicated in the recipient's ISP;
- 2. community integration and coordination of transportation services, including medical appointments; and
- 3. providing medical and physical health care that can be delivered by unlicensed persons in accordance with Louisiana's Nurse Practice Act.

B. Companion care services are arranged by provider organizations that are subject to licensure. The companion is an employee of the provider organization and is responsible for providing limited, daily direct services to the recipient.

1. The companion shall be available in accordance with a pre-arranged time schedule and available by telephone for crisis support on short notice.

2. Services may be provided may be provided by a family member who is not the recipient's spouse, legally responsible relative or legal guardian.

C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the recipient's ISP which defines all of the shared responsibilities between the companion and the recipient. The written agreement shall include, but is not limited to:

- a. types of support provided by the companion;
- b. activities provided by the companion; and
- c. a typical weekly schedule.

2. Revisions to this agreement must be facilitated by the provider organization and approved by the ISP Team. Revisions may occur at the request of the recipient, the companion, the provider or other ISP Team members.

3. The provider organization is responsible for performing the following functions which are included in the daily rate:

- a. arranging the delivery of services and providing emergency services;
- b. making an initial home visit to the recipient's home, as well as periodic home visits as required by the department;

c. contacting the companion a minimum of once per week or as specified in the recipient's Individual Support Plan; and

d. providing 24-hour oversight and supervision of the companion care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the recipient which assures that:

a. the companion's portion of expenses must be at least \$200 per month, but shall not exceed 50 percent of the combined monthly costs which includes rent, utilities and primary telephone expenses; and

b. inclusion of any other expenses must be negotiated between the recipient and the companion. These negotiations must be facilitated by the provider and the resulting agreement must be included in the written agreement and in the recipient's ISP.

D. Companion Responsibilities

1. The companion is responsible for:

- a. participating in, and abiding by, the ISP;
- b. maintaining records in accordance with State and provider requirements; and
- c. purchasing his own food and personal care items.

E. Service Limits

1. Companion care services may be authorized for up to 360 hours per year as documented in the recipient's ISP.

F. Service Exclusions

1. Separate payment will not be made for community living supports since these services are integral to, and inherent in, the provision of companion care services.

2. Separate payment will not be made for the following residential service models if the recipient is receiving companion care services:

- a. respite care service-out of home;
- b. shared living;
- c. shared living-conversion; or
- d. host home.

G. Provider Qualifications. The provider agency must be licensed as a Personal Care Attendant Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16307. Day Habilitation Services

A. Day habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an individual's home. These activities shall promote independence, autonomy and assist the recipient with developing a full life in his community. The primary focus of day habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the individualized skills and include the intended outcome for the individual.

2. Individualized progress for the skill acquisition and maintenance activities should be routinely reviewed and evaluated, with revisions made as necessary to promote continued skill acquisition.

3. As an individual develops new skills, his training should move along a continuum of habilitation services offered toward greater independence and self-reliance.

B. Day habilitation services shall:

1. focus on enabling individuals to attain their maximum skills;

2. be coordinated with any physical, occupational or speech therapies listed in the recipient's ISP;

3. serve to reinforce skills or lessons taught in school, therapy or other settings; and

4. be furnished on a regularly scheduled basis for one or more days per week;

a. services may be furnished either half-day (over 2 and up to 4 hours per day) or full-day (over 4 hours per day) based on time spent on-site by the recipient.

C. Service Exclusions

1. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

2. Time spent in traveling to and from the habilitation program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

3. Billing may be made for only one habilitative or vocational service per day.

4. Day Habilitation services cannot be billed for the same time as any of the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan; or

c. respite care services—out-of-home.

D. Provider Qualifications. Providers must be licensed as an Adult Day Care Agency or certified by the Louisiana Rehabilitation Services as a Community Rehabilitation Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16309. Dental Services

A. Dental services available through the ROW include:

1. comprehensive oral examinations;

2. x-ray films;

3. cleanings;

4. scalings;

5. root canals;

6. crowns;

7. surgical and non-surgical extractions;

8. sedations and anesthesia;

9. topical fluoride treatments; and

10. full or partial dentures.

C. Service Exclusion. Recipients must first access dental services covered under the Medicaid State Plan before utilizing dental services through the Residential Options Waiver.

D. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the

specific dental services in all specialty areas provided to the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16311. Environmental Accessibility Adaptations

A. Environmental Accessibility Adaptations are physical adaptations to the recipient's home or vehicle which are necessary to ensure his health, welfare and safety, or which enable him to function with greater independence in the home.

1. All adaptations to the home and vehicle must meet all applicable standards of manufacture, design and installation.

B. Home accessibility adaptations may include the performance of assessments to determine the types of modifications that are needed and may include the following services to accommodate the medical equipment and supplies which are necessary to assure the welfare of the recipient:

a. installation of ramps and grab-bars;

b. widening of doorways;

c. modification of bathroom facilities; or

d. installation of specialized electric and plumbing systems.

1. Home accessibility adaptations may be applied to rental or leased property only with the written approval of the landlord and approval by OCDD.

2. When state and local building or housing code standards are applicable, modifications to the home shall meet such standards.

C. Environmental adaptation services to the home and vehicle include the following:

1. training the recipient and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;

2. repair of all equipment and/or devices, including battery purchases and other reoccurring replacement items that contribute to the ongoing maintenance of the adaptation(s); and

3. service contracts and other warranties.

D. Service Exclusions for Home Adaptations

1. Home modification funds are not intended to cover basic construction cost. Waiver funds may only be used to pay the cost of purchasing specific approved adaptations for the home, not for the construction costs of additions to the home.

2. Home modifications shall not be furnished to adapt living arrangements that are owned or leased by providers of waiver services.

3. Home modifications shall not include those modifications which add to the total square footage of the home, except when the additional square footage is necessary to make the required adaptation work.

4. Home modifications shall not include those modifications which are of general utility and are not of direct medical or remedial benefit to the individual, including, but not limited to:

a. flooring;

b. roof repair;

c. central air conditioning;

- d. hot tubs;
- e. swimming pools;
- f. exterior fencing; or
- g. general home repair and maintenance.

E. Vehicle adaptations are modifications to an automobile or van that is the waiver recipient's primary means of transportation in order to accommodate his special needs. These adaptations must be specified in the ISP as necessary to enable the recipient to integrate more fully into the community and to ensure his health, welfare and safety.

1. The scope of vehicle modifications may include the performance of necessary assessments to determine the types of modifications that are necessary and may include the installation of a lift or other adaptations to make the vehicle accessible to the recipient or for the recipient to drive.

2. Maintenance and/or repair of vehicle adaptations are included for coverage under ROW.

F. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to adapt vehicles that are owned or leased by paid caregivers or providers of waiver services, or to purchase or lease a vehicle.

2. Vehicle modifications which are of general utility and are not of direct medical or remedial benefit to the recipient are not covered in the ROW.

3. Regularly scheduled upkeep and maintenance of a vehicle is not covered.

4. Car seats are not considered a vehicle adaptation.

G. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a Home Improvement Contractor.

a. In addition, these providers must meet the applicable state and/or local requirements governing their licensure or certification.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

a. Existing providers of environmental accessibility adaptations to vehicles must comply with the licensing and accreditation requirements within 12 months of the effective date of the final Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16313. Host Home

A. Host Home services assist recipients in meeting their basic adaptive living needs and offer direct support where required. Recipients are afforded a welcoming, safe and nurturing family atmosphere in a family home environment. Host Home services are available to waiver recipients of any age and take into account compatibility, including individual interests, age, needs for privacy, supervision and support

needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required.

1. Host Home services may be provided by an individual unrelated to the recipient or by a family member, but shall not be provided by a parent, spouse or legally responsible relative or legal guardian.

B. Host home services:

1. include assistance with the activities of daily living specified in the recipient's ISP;

2. assist recipients to develop their leisure interests and activities in the home setting and their relationships with other members in the household; and

3. provide other supports consistent with the recipient's goals, person-centered plans and identified support needs.

C. Host home services are managed by provider organizations that are subject to licensure by the State. The provider organization is responsible for the following functions which are included in the reimbursement rate:

1. arranging for a host home and overseeing the delivery of services by the contractor and providing emergency services;

2. making an initial inspection of the host home, as well as periodic inspections, as required by licensing regulations; and

3. providing 24-hour oversight and supervision of host home services including back-up for the host home contractor for the scheduled and nonscheduled absences of the contractor;

a. The recipient, or his legally authorized representative if he is a minor, may agree for the recipient to temporarily move in with another host home family. In this instance, the host home provider is still responsible for oversight, supervision and back-up of the host home service.

D. Host home contractors are responsible for:

1. assisting with the development of the recipient's ISP and must abide by the provisions of the plan;

2. maintaining and providing data to assist in the evaluation of the recipient's personal goals;

3. maintaining adequate records to substantiate service delivery and producing such records upon the department's request;

4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the host home setting;

5. immediately reporting to their agencies any major issues or concerns related to the recipient's safety and well-being;

6. assisting the recipient to access community services, activities and in pursuing and developing recreational and social interests outside the home;

7. facilitating the recipient in becoming a part of his community and assisting with the teaching of community living skills as outlined in the ISP to achieve the recipient's goals concerning his community and social life, as well as to maintain contacts with his biological family and natural supports as specified in the person-centered plans;

8. furnishing assistance to the recipient, who is either working or interested in working, and to the provider agency

and other service entities in order to support the recipient's vocational objectives;

9. assisting recipients in keeping medical and therapy appointments, as well as attending these appointments when their support is beneficial; and

10. providing or arranging for transportation to school, work and medical/therapy appointments.

D. Host home contractors who serve children are required to provide daily supports and supervision on a 24-hour basis to meet on-going support needs and to handle emergencies as any family would do for their minor child as required and based on age, capabilities, health conditions and any special needs.

E. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult recipient's ISP based on medical, health and behavioral needs, age, capabilities and any special needs.

1. Host Home contractors that serve adults who have been interdicted must ensure that services are furnished in accordance with the legal requirements of the interdiction.

F. Host home contractors who are engaged in employment outside the home must adjust these duties to allow the flexibility needed to meet their responsibilities to the recipient.

G. Host Home Capacity. Regardless of the funding source, a host home contractor may not provide services for more than two recipients in the home.

H. Service Exclusions

1. Separate payment will not be made for community living supports since these services are integral to, and inherent in, the provision of host home services.

2. Separate payment will not be made for the following residential service models if the recipient is receiving host home services:

- a. respite care services—out-of-home;
- b. shared living;
- c. shared living-conversion; or
- d. companion care.

3. The host home contractor may not be the same individual as the owner or administrator of the designated provider agency.

I. Provider Qualifications. Providers must be licensed as a Class A Child Placing Agency to serve children or be approved by OCDD to serve adults in the host home setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16315. Intensive Community Supports

A. Intensive community supports (ICS) are specialized behavioral and psychiatric supports for people in the community who are at imminent risk of institutionalization. ICS include a collaborative, inter-disciplinary approach to develop individualized behavioral and psychiatric strategies that are both person-centered and effective.

1. Intensive community supports are provided through a specialized professional treatment team consisting of a/an:

- a. psychologist;
- b. psychiatrist;

- c. registered nurse;
- d. social worker; and as needed,
- e. an associate or assistant to a psychologist.

2. Each member is involved collaboratively in the development of an inter-disciplinary plan. The most clinically appropriate team member(s) represents the team in providing direct service to the recipient.

3. Critically appropriate team members must spend a minimum of one hour weekly meeting with the recipient and/or care givers at the onset of treatment.

4. Core team members include the:

- a. psychologist;
- b. social worker; and
- c. registered nurse.

NOTE: Psychologists must provide clinical leadership and provide supports consistent with person-centered practices and Louisiana's Guideline for Behavioral Supports.

5. Core team members must review summary data at least weekly. Written behavioral support strategies must be reviewed and updated at least monthly, based on the recipient's response to services.

6. The team also works closely with support coordinators to assure a coordinated team effort when other professionals in the community are providing supports (e.g., a neurologist, primary care physician, or physical therapist).

B. Supports and services available through the ICS include:

1. psychological evaluations;
2. psychosocial assessments;
3. psychiatric evaluations;
4. medical screenings;
5. intensive formalized positive behavioral supports;
6. psychiatric treatments;
7. family and/or agency training;
8. service transition planning;
9. brief counseling therapies;
10. 24-hour on-call telephone supports; and
11. crisis planning.

C. Recipient Qualifications. Documentation is required to demonstrate that all of the following criteria for intensive community supports services have been met. This documentation should especially demonstrate that existing services have not been able to remediate the participant's behavior and that more intensive interventions are necessary. To qualify for ICS, an individual must:

1. have an ongoing pattern of behavior that includes:
 - a. physical harm to self or others;
 - b. behaviors/psychiatric symptoms which have led to institutionalization in the past; or
 - c. psychiatric symptoms with a high probability of institutionalization including, but not limited to:
 - i. self-injurious behavior;
 - ii. physical aggression;
 - iii. illegal or inappropriate sexual acts;
 - iv. reckless endangerment;
 - v. psychiatric conditions leading to the denial of self-preservation; or
 - vi. extremely poor hygiene.
2. be at imminent risk of institutionalization;
3. have a need for 24-hour on-call telephone supports and crisis planning to support health and safety; and

4. have a rating of four or greater in behavioral supports on the Louisiana PLUS.

D. Service Exclusions

1. Intensive community supports do not include onsite crisis intervention services and cannot adequately serve people who:

- a. threaten or attempt suicide or homicide; or
- b. have a pattern of felony violations involving violence or the victimization of others.

2. When the ICS team is officially invoked for intensive or specialized situations, service authorization will not be approved and reimbursement will not be paid for other behavioral consultants/professional service providers who are not members of the ICS Team. The team may bill a team rate under the ICS definition provided their new service plan has been written and their assessment conducted.

3. Individual ICS Team members can subsequently bill an individual rate under the Professional Services definition for their follow-up services related to the ICS Team's assessment and service plan, provided this service is clearly linked to their ICS Team responsibilities.

4. Individual ICS Team members may also bill an individual rate under the Professional Services definition for services not linked to their ICS Team responsibilities, provided these services are clearly differentiated as regular, non-ICS professional services.

E. Provider Qualifications

1. Providers of ICS must have a current, valid license as a Family Support Agency serving individuals with developmental disabilities.

F. Staffing Qualifications

1. ICS Team members must possess a current, valid license issued by the appropriate governing board of Louisiana for that profession. The specific service delivered must be consistent with the scope of the license held by the professional.

a. Each ICS Team member must have a minimum of two years experience providing professional services to people with developmental disabilities or receive supervision by professional staff that has the requisite experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16317. Nursing Services

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the state's Nurse Practice Act. The services require an individual nursing service plan and must be included in the Individual Support Plan.

1. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program under the Medicaid State Plan.

2. A physician's letter of medical necessity, 90-L and 485, an individual nursing service plan, a summary of medical history and the nursing checklist are required for nursing services.

3. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

B. Nursing consulting services include assessments and health related training and education for recipients and caregivers.

1. Assessment services are offered on an individual basis only and must be performed by a registered nurse.

2. Consulting services may also address healthcare needs related to prevention and primary care activities.

3. The health related training and education service is the only nursing service which can be provided to more than one recipient simultaneously. In this instance, each recipient is billed for his or her portion of the total service time.

C. Service Requirement. Recipients must first exhaust all available nursing visits provided under the Medicaid State Plan prior to receiving services through the waiver program.

D. Provider Qualifications

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or be an enrolled Shared Living Services agency with a current, valid license as a Supported Independent Living Agency.

E. Staffing Requirements

1. Nursing services shall be provided by individuals with either a current, valid license as a registered nurse from the Louisiana State Board of Nursing or a current, valid license as a practical nurse from the Board of Practical Nurse Examiners.

2. The RN or the LPN must possess two years of service delivery experience to persons with developmental disabilities post licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16319. One Time Transitional Services

A. One Time Transitional Services are one-time, set-up services to assist individuals in making the transition from an ICF/MR to their own home or apartment in the community of their choice.

1. Allowable transitional expenses may include:

- a. nonrefundable security deposits that do not include rental payments;
- b. set up fees for utilities;
- c. essential furnishings to establish basic living arrangements, including:
 - i. bedroom and living room furniture;
 - ii. table and chairs;
 - iii. window blinds
 - iv. food preparation items and eating utensils; and
 - v. a telephone; and
 - vi. moving expenses to occupy a community domicile;
- d. health and safety assurances including:
 - i. pest eradication;
 - ii. allergen control; or
 - iii. one-time cleaning prior to occupancy.

B. The recipient's support coordinator will arrange for transitional services for the individual.

C. Service Limits

1. Set-up transitional expenses are capped at \$3,000 per person over a recipient's lifetime.

D. Service Exclusions

1. Payment shall not be made for housing, rent or refundable security deposits.

2. One time transitional services are not available to waiver recipients who are receiving host home services.

3. One time transitional services are not available to waiver recipients who are moving into a family member's home.

E. The Office for Citizens with Developmental Disabilities shall be the entity responsible for coordinating the delivery of one time transitional services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16321. Personal Emergency Response System (PERS)

A. Personal Emergency Response System (PERS) is an electronic device which enables individuals to secure help in an emergency. The individual may also wear a portable help button to allow for mobility. The system is connected to the person's telephone and programmed to signal a response center once a help button is activated.

B. Recipient Qualifications. PERS services are available to individuals who:

1. have a demonstrated need for quick emergency back-up;

2. are unable to use other communication systems because they are inadequate to summon emergency assistance; or

3. do not have 24-hour direct supervision.

C. Coverage of the PERS includes the rental of the electronic device, the initial installation, training the recipient to use the equipment, and monthly maintenance fees.

D. Service Exclusions

1. Separate payment will not be made for Shared Living Services when PERS services are utilized since 24-hour direct supervision is available.

E. Provider Qualifications. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of personal emergency response systems including staffing requirements for the response center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16323. Prevocational Services

A. Prevocational Services are pre-vocational activities designed to assist individuals in acquiring and maintaining basic work-related skills for competitive employment. Because of their disabilities, these individuals need intensive ongoing support to perform in a paid work setting. Services should be offered to engage individuals in real and simulated employment tasks to determine their vocational potential. Overall goals of the program include regular community

inclusion and development of work skills and habits to improve the employability of the individual. These services must be reflective of the recipient's ISP and directed toward habilitation rather than teaching a specific job skill.

1. Prevocational Services should focus on teaching concepts and skills such as:

- a. following directions;
- b. attending to task;
- c. task completion;
- d. problem solving; and
- e. job safety skills.

2. The primary focus of prevocational services is the acquisition of employment related skills based on the individual's vocational preferences and goals.

a. These activities should include formal strategies for teaching the skills and the intended outcome for the individual.

b. Individualized progress for the activities should be routinely reviewed and evaluated with revisions made as necessary.

B. In the event recipients are compensated in the employment-related training services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If recipients are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

a. conduct six-month formal reviews to determine the suitability of this service rather than supported employment services;

b. make recommendations to transition the individual to a more appropriate vocational opportunity; and

c. provide the support coordinator with documentation of both the productivity time studies and documented reviews of current placement feasibility.

C. Service Limits

1. Services shall be furnished on a regularly scheduled basis for no more than eight hours a day, five days a week.

a. services may be furnished either half-day (over two and up to four hours per day) or full-day (over four hours per day) based on time spent on-site by the recipient.

D. Service Exclusions

1. Prevocational Services are not available to individuals who are eligible to participate in programs funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

2. Claims may be submitted for only one vocational or habilitative service per day.

3. Prevocational Services cannot be provided or billed for the same time as the following services:

- a. community living supports;
- b. professional services except direct contacts needed to develop a behavioral management plan; or
- e. respite care services—out-of-home.

4. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

E. Provider Qualifications. Providers must have a current, valid license as an Adult Day Care Center or have a Compliance Certificate from Louisiana Rehabilitation Services as a Community Rehabilitation Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16325. Professional Services

A. Professional Services are direct services to recipients, based on need, that are designed to increase the individual's independence, participation and productivity in the home, work and community. Professional services must be delivered with the recipient present and be provided based on the approved ISP and an individualized service plan. Service intensity, frequency and duration will be determined by individual need. Professional services may be utilized to:

1. provide training or therapy to an individual and/or their natural and formal supports, necessary to either develop critical skills that may be self-managed by the individual or maintained according to the individual's needs;

2. perform assessments and/or re-assessments and provide recommendations;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

4. provide consultative services and recommendations;

5. provide necessary information to the individual, family, caregivers, and/or team to assist in planning and implementing plans per the approved ISP;

6. provide caregiver training that includes instructions in skills and knowledge pertaining to the support and assistance of persons with developmental disabilities and is intended to allow caregivers to become more proficient in meeting the needs of eligible individuals;

a. all caregiver training must be included in the recipient's ISP;

7. provide caregiver counseling for the natural, adoptive, foster, or host family members of individuals with disabilities, to develop and maintain healthy, stable relationships among all caregivers, including family members, to meet the needs of the recipient; and

a. emphasis is placed on the acquisition of coping skills by building upon family strengths. Services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver;

8. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider;

a. services are intended to maximize the individual's nutritional health.

B. Professional services covered in the ROW include:

1. occupational therapy;

2. physical therapy;

3. speech therapy;

4. dietary and nutritional services;

5. social work services; and

6. psychological services.

C. Service Exclusions

1. Professional services related to behavioral health services will not be authorized once the Intensive Community Supports team is officially invoked for intensive or specialized situations.

a. Individual ICS Team members may subsequently submit a claim under the Professional Services for their follow-up services related to the ICS Team's assessment and service plan provided this service is clearly linked to their ICS Team responsibilities.

b. Individual ICS Team members may also submit a claim under the Professional Services for services that are not linked to their ICS Team responsibilities provided these services are clearly differentiated as regular, non-ICS professional services.

2. Professional services may only be furnished and reimbursed through ROW when the services are not covered under the Medicaid State Plan as medically necessary, but are of habilitative or remedial benefit to the recipient.

3. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

b. Recipients who are over the age of 21 must exhaust the professional services available under the Medicaid State Plan before accessing these services through ROW.

D. Provider Qualifications

1. Individual practitioners who enroll as providers of Professional Services must have a current, valid license from the appropriate governing board of Louisiana for that profession.

a. In addition, the professional must possess two years of service delivery experience with persons with developmental disabilities or receive supervision by professional staff that has the requisite experience.

2. Provider agencies must have Medicare certification as a free-standing rehabilitation center or a current, valid license as a:

a. home health agency,

b. personal care attendant agency,

c. supported independent living agency, or

d. family support agency serving people with developmental disabilities.

E. Staffing Requirements. Individuals furnishing professional services may either be employed by or have a contract with the enrolled provider agency.

1. Professional services must be provided by individuals with a current, valid license from the appropriate governing board of Louisiana for that profession. The specific service delivered must be consistent with the scope of the license held by the professional.

2. Each professional must also possess two years of service delivery experience with persons with developmental disabilities or receive supervision by professional staff that has the requisite experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16327. Respite Care Services—Out of Home

A. Respite care services—out-of-home are supports and services provided for the relief of those unpaid caregivers who normally provide care to recipients who are unable to care for themselves. These services are furnished on a short-term basis in a respite center by a licensed respite provider. Respite care services are necessary to prevent individuals from being institutionalized.

1. A licensed respite care facility shall insure that community activities are available to the recipient in accordance with his approved ISP, including transportation to and from these activities.

a. The rate for respite care services—out-of-home includes the transportation costs for the community activities.

2. While receiving respite care services, the recipient's routine is maintained in order to attend school, school activities, work or other community activities he would receive if he was not in the center-based respite facility.

B. Service Limits

1. Respite Care Services are limited to 720 hours per recipient, per individual support plan year. Requests for an extension of the service limit are subject to the department's established approval process and require proper justification and documentation.

C. Service Exclusions

1. Room and board shall be covered only if it is provided as part of respite care furnished in a state-approved facility that is not a private residence.

2. Respite care services—out-of-home may not be billed for recipients receiving the following services:

- a. shared living;
- b. shared living conversion;
- c. companion care; or
- d. host home.

D. Provider Qualifications. The provider must possess a current, valid license as a respite care center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16329. Shared Living Services

A. Shared living services assist the recipient in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the recipient and developed in accordance with his goals and wishes for his particular shared living setting with regard to compatibility, interests, age and privacy.

1. A shared living services provider delivers supports which include 24-hour staff presence and responsibilities as required in each recipient's ISP.

2. The provider is responsible for the daily schedule to provide the support, supervision, safety and security pertinent to the individual as he engages in a variety of community work and recreational/leisure activities and associations.

3. This service includes assistance with all of the activities of daily living.

B. Shared Living Conversion Option. The shared living conversion option is allowed only in homes which were previously licensed and certified as an ICF/MR for up to a maximum of eight licensed and Medicaid-funded beds on June 30, 2007.

1. The number of individuals residing in this service model shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/MR on June 30, 2007 or up to 6 individuals, whichever is less.

C. Shared Living Option

1. A shared living option is allowed for new or existing providers for up to a maximum of three individuals in a shared home setting. These shared home settings must be either a home owned or leased by the waiver recipients, or a home owned or leased and operated by a licensed shared living provider.

2. A shared living option for up to a maximum of 4 individuals in a shared home setting is limited to existing licensed and certified public or private ICFs/MR which elect to downsize into this model.

D. Service Exclusions

1. Payments are not made for room and board, the cost of home maintenance, upkeep or improvements.

2. Separate payment will not be made for transportation for the purpose of community access as this is a component of Shared Living services.

3. The following services are not available to recipients utilizing share living and shared living conversion services:

- a. community living supports;
- b. respite care services;
- c. companion care; or
- d. host home.

E. Provider Qualifications. Providers must be enrolled as a shared living agency and have a current, valid license as a Supported Independent Living Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16331. Specialized Medical Equipment and Supplies

A. Specialized medical equipment and supplies includes durable and non-durable equipment that is necessary to address the functional limitations of the recipient as well as items necessary to support life or to address physical conditions, along with the ancillary supplies and equipment needed for proper functioning of such items. Specialized medical equipment and supplies may only be furnished and reimbursed through ROW when the services are not covered under the Medicaid State Plan as medically necessary, but are of rehabilitative or remedial benefit to the recipient.

1. Coverage includes for the purchase and/or rental of equipment, devices, controls, appliances and supplies specified in the ISP which increases the recipient's ability to:

- a. perform activities of daily living;
- b. perceive, control or communicate with his environment; or
- c. maintain health and safety.

B. Items provided through this waiver are in addition to any medical equipment and supplies covered under the Medicaid State Plan. All items must meet applicable standards of manufacture, design and installation.

C. Services include the following:

1. training the recipient and caregivers in the use and maintenance of equipment, devices, controls, appliances, supplies and related items;

2. repair and upkeep of all equipment, including battery purchases and other reoccurring replacement items that contribute to ongoing maintenance of the equipment; and

3. service contracts and other warranties.

D. Equipment includes the following items that are not covered under the Medicaid State Plan, Medicare and/or other funding sources:

1. specialized mobility devices (excluding wheelchairs);

2. specialized positioning devices or equipment;

3. therapeutic shoe inserts;

4. specialized medical equipment such as electronic lifts;

5. adaptive devices and equipment prescribed by a therapist for exercise;

7. alternative and augmentative communication boards, electronic communication devices and interfaces to operate prescribed devices.

E. Service Exclusions

1. Any equipment, device, appliance or supply that is covered under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage in the ROW.

2. Specialized equipment and supplies that are of general utility or maintenance and are not of direct medical or remedial benefit to the individual are excluded from coverage in the ROW.

F. Provider Requirements. In order to enroll to participate in the Medicaid Program, vendors of specialized medical equipment and supplies must furnish written documentation of authorization to sell, install and/or repair specialized equipment and supplies from the respective manufacturer of the designated equipment and supplies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16333. Support Coordination

A. Support coordination services are provided to all ROW recipients to assist them in gaining access to all of their needed services regardless of the funding source for the services. Support coordination will provide information and assistance to waiver recipients in directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the recipient's approved ISP.

2. Support coordinators shall also participate in the Evaluation and Re-evaluation of the recipient's ISP.

B. Support coordinators are responsible for providing assistance to recipients who choose the self-direction option with their review of the Self-direction Employer Handbook and for being available to these recipients for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a support coordination agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16335. Supported Employment

A. Supported Employment is competitive work in an integrated work setting, or employment in an integrated work setting, in which the individuals are working toward competitive work.

1. The support services provided are consistent with the individual's:

a. strengths;

b. resources;

c. priorities;

d. concerns;

e. abilities;

f. capabilities;

g. interests; and

h. informed choices.

2. Ongoing support services are provided to individuals for whom competitive employment has not traditionally occurred.

3. Services are provided to individuals who are not served by Louisiana Rehabilitation Services and need more intense, long-term follow along, and usually cannot be competitively employed because supports cannot be successfully faded.

B. Supported employment services include:

1. individual placement which is a supported employment placement strategy in which an employment specialist (job coach) places a person into competitive employment, provides training and support and then gradually reduces time and assistance at the worksite;

2. services that assist a recipient to develop and operate a micro-enterprise;

a. This service consists of:

i. assisting the recipient to identify potential business opportunities;

ii. assistance in the development of a business plan, including potential sources of business financing and other assistance in developing and launching a business;

iii. identification of the supports that are necessary in order for the recipient to operate the business; and

iv. ongoing assistance, counseling and guidance once the business has been launched.

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The disabled workers may be disbursed throughout the company and among non-disabled workers or congregated as a group in one part of the business; and

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor).

C. Service Limits

1. The required minimum number of service hours per day for supported employment is as follows for:

- a. individual placement services, the minimum is 1 hour;
- b. services that assist a recipient to develop and operate a micro-enterprise, the minimum is 1 hour;
- c. an enclave, the minimum is five hours; and
- d. a mobile work crew, the minimum is five hours.

D. Service Exclusions

1. Payment will only be made for the adaptations, supervision and training required by individuals receiving waiver services, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

2. Billing may be made for only one vocation or habilitative service per day.

3. Supported Employment Services cannot be billed for the same time as any of the following services:

- a. community living supports;
- b. professional services except direct contacts needed to develop a behavioral management plan; or
- c. respite care services—out-of-home.

4. The provider is responsible for all transportation related to provision of the service, but is not responsible for transportation to and from the recipient's home.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the recipient's ISP.

5. The following incentive payments, subsidies or unrelated vocational training expenses are excluded from coverage in supported employment services:

- a. incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
- b. payments that are passed through to users of supported employment programs; or
- c. payments for vocational training that is not directly related to an individual's supported employment program.

6. Services are not available to individuals who are eligible to participate in programs funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

E. Provider Qualifications. Providers must have a Compliance Certificate from Louisiana Rehabilitation Services as a Community Rehabilitation Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16337. Transportation Services

A. Transportation services enable waiver recipients to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, and community inclusion as outlined in the recipient's ISP. Transportation

services under the waiver shall be offered in accordance with the recipient's ISP and must be documented in the ISP.

1. The recipient must be present to receive this service.

2. Whenever possible, the recipient must utilize the following resources for transportation:

- a. family, neighbors, friends or community agencies which can provide this service without charge; or
- b. public transportation or the most cost-effective method of transport available.

B. Transportation for community access and for habilitative and vocational services represents two separate and distinct services.

1. Transportation-Community Access is intended to assist the recipient to access community activities, resources and services to increase integration with persons who do not have developmental disabilities.

2. Transportation-Habilitative and Vocational is intended to assist the recipient to access Day Habilitation, Pre-Vocational and Supported Employment services.

a. These services are meant to provide maximum flexibility to the recipient to choose the mode of transportation that he wishes to use to reach a habilitative or vocational site. Therefore, transportation for this purpose is available and billable only if the individual receives a vocational or habilitative service on the day that this service is provided.

C. Service Limits

1. All community access trips shall be identified in the recipient's ISP. These trips are limited to three per day and must be arranged for geographic efficiency. Greater than three trips per day require approval from the Department of Health and Hospitals or its designee.

2. This service is limited to a maximum of two one-way trips per service day for a maximum of 264 days, 528 service units per year.

D. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

- a. shared living services; or
- b. respite care services—out-of-home.

E. Provider Qualifications. In order to participate in the Medicaid Program, transportation providers must comply with the following requirements. Providers of other waiver services (day habilitation, supported employment, shared living, etc.) may also separately enroll as transportation providers and must comply with the same requirements.

1. Transportation providers must comply with all state laws and local ordinances governing vehicle licensing, registration, inspection and operation.

2. For profit providers shall have a minimum liability insurance coverage of \$100,000 per person and \$300,000 per accident or a \$300,000 combined service limits policy.

a. The liability policy shall cover all automobiles owned or leased by the provider utilized for furnishing transportation services.

b. Premiums shall be prepaid for a period of six months. Verification of prepaid insurance must be a true and

correct copy of the policy issued by home office of the insurance company. The verification must include the dates of coverage and a 30 day cancellation notification clause.

i. Statements from the agent writing the policy will not be acceptable.

c. Verification of renewal of the insurance policy must be submitted to the Bureau of Health Services Financing (BHSF) no later than 48 hours prior to the end date of coverage.

i. The policy must provide that the 30 day cancellation notification be issued to BHSF. Upon receipt of the cancellation or expiration of coverage notice, the provider agreement for participation will be immediately cancelled. The ending date of participation shall be the ending date of insurance coverage.

ii. Retroactive coverage statements will not be accepted.

d. Providers who lose the right to participate in the Medicaid Program due to lack of prepaid insurance may re-enroll and will be subject to all applicable enrollment procedures, policies, and fees for new providers.

3. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain the state minimum automobile liability insurance coverage, a current state inspection sticker, and a current valid driver's license.

i. No special inspection by the Medicaid agency will be conducted.

ii. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the sworn and notarized statement of the individual enrolling for payment that all three requirements are met.

iii. Family and friends transportation providers are limited to transporting up to three specific waiver recipients.

H. Staffing Requirements. All drivers employed by for profit and non-profit transportation services providers must have a current, valid class D (chauffeur) license.

I. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all applicable state laws and regulations and are subject to inspection by the Department of Health and Hospitals or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Chapter 165. Self-Direction Initiative

§16501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver recipient to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver recipients choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own

care and individual budget. If the recipient is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the recipient or authorized representative include:

1. completion of mandatory trainings, including the rights and responsibilities of managing his own services and supports and individual budget;

2. participation in the self-direction service option without a lapse in, or decline in quality of care or an increased risk to health and welfare; and

a. recipients must adhere to the health and welfare safeguards identified by the team, including:

i. the application of a comprehensive monitoring strategy and risk assessment and management systems; and

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver recipients;

3. participation in the development and management of the approved personal purchasing plan.

a. This annual budget is determined by the recommended service hours listed in the recipient's ISP to meet his needs.

b. The recipient's individual budget includes a potential amount of dollars within which the recipient, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the ISP, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary termination. The waiver recipient may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a recipient and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the recipient is compromised by continued participation in the self-direction service option;

b. the recipient is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the recipient or the authorized representative; or

d. over three payment cycles in the period of a year, the recipient or authorized representative:

i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff;

ii. fails to follow the personal purchasing plan and the ISP;

iii. fails to provide required documentation of expenditures and related items; or

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

D. Employees of recipients in the self-direction service option are not employees of the fiscal agent or the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Chapter 167. Provider Participation

§16701. General Provisions

A. In order to participate in the Medicaid Program as a provider of services in the Residential Options Waiver, a provider must:

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department; and

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved ISP and provide said documentation upon the Department's request.

C. In order for a provider to bill for services, the waiver recipient and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the recipient is not present:

- a. environmental accessibility adaptations;
- b. personal emergency response systems; and
- c. one-time transitional services.

2. All services must be documented in service notes which describe the services rendered and progress towards the recipient's personal outcomes and his ISP.

D. If transportation is provided as part of a waiver service, the provider must comply with the requirements for transportation services providers set forth in §16337.G-I.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Chapter 169. Reimbursement

§16901. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver recipient. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. respite care;
2. community living supports (CLS);
 - a. up to three recipients may share CLS services if they share a common provider of this service;
 - b. there is a separate reimbursement rate for CLS when these services are shared;
3. professional services furnished by a/an:
 - a. psychologist;
 - b. speech therapist;
 - c. physical therapist;

d. occupational therapist;

e. social worker; or

f. dietician/nutritionist;

4. nursing services;

5. intensive community supports; and

6. supported employment.

B. The following services are reimbursed at the cost of adaptation device, equipment or supply item:

1. environmental accessibility adaptations;

a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the recipient a certificate of warranty for all labor and installation work and supply the recipient with all manufacturers' warranty certificates;

2. assistive technology; and

3. specialized medical equipment and supplies.

C. The following services are reimbursed at a per diem rate:

1. host home;

2. companion care living services;

3. shared living services;

a. Per diem rates are established based on the number of individuals sharing the living service module for both for shared living and shared living conversion services.

D. The following services are reimbursed at a per diem rate which may be billed either half-day (over two and up to four hours per day) or full-day (over four hours per day) based on time spent on-site by the recipient:

1. day habilitation; and

2. pre-vocational.

E. The reimbursement for transportation services is a flat fee based on a capitated rate.

F. Support coordination services shall be reimbursed at a fixed monthly rate in accordance with the terms of the established contract.

G. Installation of a personal emergency response system (PERS) is reimbursed at a one-time fixed rate and maintenance of the PERS is reimbursed at a monthly rate.

H. Transition expenses from an ICF/MR or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a one-time maximum rate.

I. Dental services are reimbursed at the Medicaid fee-for-service rate.

J. Reimbursement Exclusion. No payment will be made for room and board under this waiver program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

§16903. Direct Support Staff Wages

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher.

1. community living supports;

2. respite services-out of home;

3. shared living conversion option;

4. shared living option;
5. day habilitation;
6. prevocational services; and
7. supported employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is the person responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 25, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that the implementation of this proposed Rule will have a positive effect on family functioning, stability, or autonomy as described in R.S. 49:972 as it will promote the independence of people with developmental disabilities.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—Residential Options Waiver

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated cost to the state of \$1,176,054 for FY 07-08 and \$1,975,632 for FY 08-09. It is anticipated that \$5,372 (\$2,686 SGF and \$2,686 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$2,991,394 for FY 07-08 and \$5,025,190 for FY 08-09. It is anticipated that \$2,686 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to implement a new home and community-based services waiver, called the Residential Options Waiver, to promote independence for individuals with developmental disabilities through a wide array of services,

supports and residential options (200 recipients). It is anticipated that implementation of this proposed rule will increase program expenditures by approximately \$4,167,448 for FY 07-08 and \$7,000,822 for FY 08-09."General Appropriation Bill reflects the funding for this waiver."

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips
Medicaid Director
0708#092

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Military Sales Practices (LAC XIII.Chapter 125)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance for the Louisiana Department of Insurance hereby gives notice of the department's intent to promulgate Regulation 92, which is in part predicated on Public Law 109-290, the "Military Personnel Financial Services Protection Act." The purpose of Regulation 92 is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain practices identified by the U.S. Congress and the National Association of Insurance Commissioners to be false, misleading, deceptive or unfair.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 125. Regulation 92—Military Sales Practices

§12501. Purpose

A. The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12503. Scope

A. This regulation shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12505. Authority

A. This regulation is promulgated by the Commissioner of Insurance pursuant to authority granted under the

Louisiana Insurance Code, Title 22, §22:1 et seq., particularly 22:3, and the Unfair Trade Practices Law, see Title 22, §1211, and specifically §1214.(1)(a).

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12507. Exemptions

A. This regulation shall not apply to solicitations or sales involving:

1. credit insurance;
2. group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
3. an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
4. individual stand-alone health policies, including disability income policies;
5. contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;
6. life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or
7. contracts used to fund:
 - a. an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - b. a plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;
 - c. a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
 - d. a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - e. settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - f. prearranged funeral contracts.

B. Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DOD Instruction 1344.07—Personal Commercial Solicitation on DOD Installations or successor directive.

C. For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and

unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this Subsection shall be construed to exempt an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12509. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein, unless the context clearly indicates otherwise.

Active Duty—full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

Department of Defense (DOD) Personnel—all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

Door to Door—a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

General Advertisement—an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

Insurer—an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

Insurance Producer—a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

Known or Knowingly—depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

1. is a service member; or
2. is a service member with a pay grade of E-4 or below.

Life Insurance—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

Military Installation—any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

MyPay—a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

Service Member—any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

Side Fund—a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

- a. accumulated value or cash value or secondary guarantees provided by a universal life policy;
- b. cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- c. a premium deposit fund which:
 - i. contains only premiums paid in advance which accumulate at interest;
 - ii. imposes no penalty for withdrawal;
 - iii. does not permit funding beyond future required premiums;
 - iv. is not marketed or intended as an investment; and
 - v. does not carry a commission, either paid or calculated.

Specific Appointment—a prearranged appointment agreed upon by both parties and definite as to place and time.

United States Armed Forces—all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12511. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation

A. The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

1. knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;
2. soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary;
3. knowingly making appointments with or soliciting service members during their normally scheduled duty hours;
4. making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;
5. soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;
6. posting unauthorized bulletins, notices or advertisements;
7. failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members

solicited or encouraging service members solicited not to complete or submit a DD Form 2885;

8. knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DOD or any branch of the Armed Forces.

B. The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

1. using DOD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members;
2. using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12513. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location

A. The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

1. submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This Subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;
2. knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this Section, a formal banking relationship is established when the depository institution:
 - a. provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C., §4301 et seq. and the regulations promulgated thereunder; and
 - b. permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;
3. employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as

"Savings" or "Checking" and where the service member has no formal banking relationship as defined in §12513.A.2;

4. entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

5. using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

6. offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

7. knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited;

8. advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

B. The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair.

1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

2. Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

3. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

C. The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums,

costs or investment returns and are declared to be false, misleading, deceptive or unfair:

1. using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid;

2. excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

D. The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

1. making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

2. making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive;

3. suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

E. The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

1. deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

2. failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

3. excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

4. failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16;

5. excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

a. an explanation of any free look period with instructions on how to cancel if a policy is issued; and

b. either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of the department's Regulation 55, "Life Insurance Illustrations" shall be deemed sufficient to meet this requirement for a written disclosure.

F. The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

1. excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

2. offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance:

a. "insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents;

b. "other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits;

3. excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

a. unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

b. unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

c. which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

4. excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12515. Severability

A. If any provision of these Sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these Sections which can be given effect without the invalid provisions or application. To this end all provisions of these Sections are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12517. Effective Date

A. This regulation shall become effective upon final publication in the *Louisiana Register* and shall apply to acts or practices committed on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:1211, 22:1214; and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

Family Impact Statement

1. Describe the effect of the proposed Rule on the stability of the family. Regulation 92 Rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed Rule on the authority and rights of parents regarding the education and supervision of their children. Regulation 92 Rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed Rule on the functioning of the family. Regulation 92 should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed Rule on family earnings and budget. Regulation 92 should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. Regulation 92 should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the ability of the family or a local government to perform the function as contained in the Rule. Regulation 92 should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

On Monday, September 24, 2007, beginning at 9 a.m., the Department of Insurance will hold a public hearing in the Plaza Hearing Room of the Poydras Building located at 1702 N. Third Street, Baton Rouge, LA, 70802. The purpose of the hearing is to allow for public commentary concerning the proposed promulgation of Regulation 92 as set forth below.

Persons interested in obtaining copies of Regulation 92 or in making comments relative to this proposal may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Written comments will be accepted through the close of business on Tuesday, September, 2007.

James J. Donelon
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Military Sales Practices**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

DOI does not expect any implementation costs as a result of the adoption of this regulation. Any additional work will be absorbed by existing DOI staff. The regulation merely sets standards to protect active duty members of the United States Armed Forces from dishonest and predatory insurance sales practices.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no increase or decrease in revenue as a result of Regulation 92.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The regulation will provide better protection from predatory and dishonest insurance sales practices for active members of the United States Armed Forces, but DOI has no way of estimating the economic value of that benefit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this regulation should have no impact upon competition and employment in the state.

Chad M. Brown
Deputy Commissioner
0708#074

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The proposed action will adopt Statewide Order No. 29-R-07/08 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-06/07.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 2. Statewide Order No. 29-R

Chapter 7. Fees

§701. Definitions

Application for Noncommercial Injection Well—an application to construct and/or operate a Class I, II, III, or V noncommercial injection well, as authorized by Statewide Order Nos. 29-B (LAC 43:XIX.401 et seq.), 29-M (LAC 43:XVII.301 et seq.), 29-N-1 (LAC 43:XVII.101 et seq.), 29-N-2 (LAC 43:XVII.201 et seq.), 29-M-2 (LAC 43:XVII.3101 et seq.), successor regulations.

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 9.0.

Capable Gas—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2006.

Capable Oil—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2006.

Production Well—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2006.

Regulatory Fee—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31, 2006, and located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:

§703. Fee Schedule for Fiscal Year 2007-2008

A. ...

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,964 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,482 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$708 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$708 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$10,389 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	16
Tier 2	1 - 5,000	87
Tier 3	5,001 - 15,000	251
Tier 4	15,001 - 30,000	413
Tier 5	30,001 - 60,000	657
Tier 6	60,001 - 110,000	907
Tier 7	110,001 - 9,999,999	1,115

E. - E.3. ...

F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$20.20 per mile, or a minimum of \$360, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$20.20 per mile, or a minimum of \$360, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-07/08 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-07/08) supersedes Statewide Order No. 29-R-06/07 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed Rules will have no effect on family earnings and family budget.

5. The proposed Rules will have no effect on the behavior and personal responsibility of children.

6. The proposed Rules will have no effect on the ability of the family or local government to perform any function as contained in the proposed Rules.

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Monday, October 1, 2007. Comments should be directed, in writing to Todd Keating, Director, Engineering Division, Office of Conservation, P.O. Box 94275, Capitol Station, Ninth Floor, Baton Rouge, LA 70804-9275 (Re: Docket No. 07-882 Proposed Statewide Order No. 29-R-07/08).

A public hearing will be held at 9 a.m., Wednesday, September 26, 2007, in the LaBelle Hearing Room, located on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh
Commissioner of Conservation

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Fees (LAC 43:XIX.701, 703, and 707)**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units resulting from this action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Proposed Statewide Order No. 29-R-07/08 establishes the Louisiana Office of Conservation Fee Schedule for the collection of application, production, and regulatory fees by the Office of Conservation and will replace the existing Statewide Order No. 29-R-06/07 and will retain the maximum revenue caps authorized in R.S. 30:1 et seq. The Proposed Rule will retain the existing fee schedule for all Application Fees. R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706 provide that the Commissioner of Conservation shall periodically and/or annually review the fees collected, and the Office of Conservation has established a practice of annually evaluating all applicable fees. The Production Tier Fee in the FY 07/08 Fee Schedule has been increased an average 16% overall due to the decreased number of participating wells. The Regulatory Fees for Class I Injection Wells have been increased an average 5.19%; and, the Regulatory Fees for Class II and III Injection Wells, and Type A and B Commercial Facilities have increased by approximately 3.83% due to the declining numbers of wells

and facilities. The Office of Conservation will collect approximately \$7,243,482 in revenue for these fees in FY 07/08.

Additionally, the passage of Act Nos. 222 and 223 of the 2004 Regular Legislative Session, authorizes the Office of Conservation to determine by rule annually, in accordance with the Administrative Procedure Act, the pipeline safety inspection fees charged for the approximately 45,462 miles of state regulated jurisdictional gas distribution and gas transmission pipelines (R.S. 30:560) and approximately 4,840 miles of state jurisdictional hazardous liquids pipelines (R.S. 30:706). Although the Office of Conservation is authorized to collect a "fee not to exceed \$22.40 per mile, or a minimum of \$400, whichever is greater" for these state jurisdictional gas and hazardous liquids pipelines, it should be emphasized that the Agency is proposing a FY 07/08 fee of only \$20.20 per mile, or a minimum of \$360, whichever is greater, which is an increase of \$2.20 per mile, or \$40 for the minimum fee, from those fees charged in FY 06/07, but is still less than the maximum fees authorized by statute. This increase in fees will help to offset the Agency's pay increases and associated related benefits as appropriated by Act 18 of the 2007 Regular Session of the Louisiana Legislature. The Office of Conservation is projected to collect approximately \$1,016,100.40 for the pipeline safety inspection fees in FY 07/08, or \$99,229 more than collected in FY 06/07.

No local governmental units will be impacted by this action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will replace the existing Office of Conservation Fee Schedule. The proposed Statewide Order No. 29-R-07/08 will retain the existing revenue caps for fees assessed to industries under the jurisdiction of the Office of Conservation, as authorized by R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706, and is expected to reach approximately \$8,259,582.40 for FY 07/08.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The passage of Statewide Order No. 29-R-07/08 will have no effect on competition and employment.

Gary P. Ross
Assistant Commissioner
0708#081

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of Management and Finance
State Uniform Construction Code Council**

Third Party Providers (LAC 55:VI.705)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council hereby proposes to amend Chapter 7, Subsections 705.B and 705.D to provide for higher insurance requirements for third party providers and to require that inspection reports be provided to the jurisdiction.

**Title 55
PUBLIC SAFETY**

Part VI. Uniform Construction Code

Chapter 7. Certificates of Registration

§705. Third Party Providers

A. - A.1. ...

B. Insurance. All third party providers shall carry at least \$500,000 in professional liability insurance. Proof of valid and current insurance coverage must be provided to the Council upon registration and renewal of registration.

C. - D.2. ...

3. Third party providers providing inspection services for non-governmental entities shall provide written copies of the approved inspection reports to the code enforcement officer of the jurisdiction prior to the issuance of the certificate of occupancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 33:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Paeton Burkett, Attorney, at 7979 Independence Boulevard, Suite 307Q, Baton Rouge, LA 70806. Comments will be accepted through close of business September 10, 2007.

Jill P. Boudreaux
Acting Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Third Party Providers**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule will not result in a significant increase in costs or savings to local governmental units since the rule only applies

to third party providers. According to current state law and Council Rules, Third Party Providers must carry a minimum amount of liability insurance and they must provide copies of their plan review to the local jurisdiction. The proposed rule merely increases the minimum insurance requirement and further requires Third Party Providers to provide copies of their inspection reports to the local jurisdiction. Furthermore, the proposed rule does not add any additional expenditures apart from or in addition to those that will result from the enactment of Act 12 of the 2005 First Extraordinary Session. Pursuant to that Act, the Department of Public Safety and Corrections has employed four (4) additional positions needed as staff for the Uniform Construction Code Council. The annual cost of these positions and associated expenses are estimated to be \$322,478 in FY 08, \$331,361 in FY 09, and \$340,601 in FY 10.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no effect on revenue collections of state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Third Party Providers obtaining their Certificate of Registration from the Louisiana State Uniform Construction Code Council will be directly impacted in that they must carry a higher limit of professional liability insurance of at least \$500,000, which is an increase of \$400,000 of coverage. This increased minimum liability requirement will result in an estimated increase to insurance premium costs for a Third Party Provider of approximately \$500 annually. Also, Third Party Providers will now have to provide local jurisdictions with copies of their inspection paperwork. This will be a minor workload adjustment to the Third Party Provider since the Third Party Provider already has this specific paperwork prepared for their clients and for their own recordkeeping purposes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as the proposed rule merely increases the minimum liability insurance requirement for all Third Party Providers and mandates that Third Party Providers provide the local jurisdiction with copies of the relevant inspection reports.

Jill P. Boudreaux
Acting Undersecretary
0708#045

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of State Police**

User Fees for Louisiana State Police Facility (LAC 55:I.301)

Under the authority of the State Police Law, R.S. 40:1375(F), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of State Police hereby proposes to amend Section 301 under Chapter 3 to amend the user fees at LSP Training facilities and to add a fee schedule for new facilities.

The proposed Rule increases the current fees as well as establishes new fees for pistol ranges, shoot houses, breaching houses, driving simulators, and conference center meeting rooms, dining rooms, and Lodge rooms. The basis and rationale for the proposed Rule is to offset increased cost

of administration and to include new LSP facilities not previously listed.

**Title 55
PUBLIC SAFETY
Part I. State Police**

Chapter 3. Training and Education

§301. User Fees for Louisiana State Police Facility

A. The Louisiana State Police announces maximum user fees for its training facilities pursuant to R.S. 40:1375(F) according to the following schedule.

Louisiana State Police Training Facility Rates	
Academy Dorm Room Single Occupancy	\$33 per day
VIP Dorm Room Single Occupancy	\$44 per day
Large Flat Classroom Seating for 50	\$220 per day
Large Tiered Classroom Seating for 50	\$220 per day
Small Flat Classroom Seating for 25-40	\$165 per day
Classroom AV Package	\$100 per day
Defensive Tactics Room Training for 75	\$330 per day
Gymnasium/Track Training for 250	\$550 per day
Training Tank Pool Training for 50	\$550 per day
Auditorium Seating for 250	\$550 per day
Computer Lab Seating for 25	\$500 per day
Conference Room w/TV Seating for 15	\$165 per day
Pistol Ranges Training for 25-50	\$550 per 8 hr day
Range Classrooms Training for 25-50	\$220 per 8 hr day
	\$30 per hour over 8
Single Level Shoothouse	\$550 per 8 hr day
	\$330 per 4 hr day
	\$55 per hour over 8
Bi-Level Shoothouse	\$660 per 8 hr day
	\$385 per 4 hr day
	\$82 per hour over 8
Rifle Range Training for 17	\$550 per day
Bomb Ranges	\$550 per day
Explosives Classrooms	\$220 per day
Explosives Breaching House #1 (Mechanical)	\$330 per day
Explosives Breaching House #2 (Advanced)	\$550 per day
Breach House Classroom	\$175 per day
Device Assembly Building	\$200 per day
Target Shoothouse Bi-level	\$385 per day
Shooting Simulator	\$220 per day
Post Blast Investigation Building #1	\$275 per day
Post Blast Investigation Building #2	\$275 per day
Post Blast Investigation Building #3	\$220 per day
Storage Building (1600sf)	\$200 per day
Storage Trailer (A/C)	\$64 per day
JESTC Grounds (Terrain only)	\$1,500 per day
Driving Track (Site only)	\$1,320 per day
Complete EVOC facility	\$10,000 per week
Driving Track (Site w/staff)	\$2,300 per day
	\$15,000 per week
	\$525 per person per 80 hr class
Driving Course (Instructors)	\$135 per person per 8 hr class
Driving Course (Defensive Driving)	\$245 per person per 16 hr class
	\$135 per person per 8 hr class
Driving Course (Teen/Civilian)	\$425 per person per 40 hr class
Driving Course (In-Service)	\$550 per day
Driving Skills Pad/Pan	\$100 per day
Police Training Vehicle	\$220 per day
Driving Simulator	\$220 per day
Driving Track Classroom(s)	\$70 per day
Driving Track Office	\$300 per week
Conference Center Projector	\$110 per day

Conference Center TV	\$50 per day
Conference Center TV w/ VCR	\$80 per day
Conference Center Lectern	\$30 per day
Conference Center Laptop Computer	\$110 per day
Conference Center AV Package	\$100 per day
Conference Center Offices	\$70 per day
	\$300 per week
Conference Center Meeting Room Seating for 60	\$550 per day
Conference Center Breakout Room Seating for 30	\$330 per day
Conference Center Breakout Room Seating for 15	\$220 per day
Seating for 15	\$350 per day
Conference Center Lounge	\$350 per day
Conference Center Dining Room	\$550 per day
Conference Center Patio	\$200 per day
Conference Center Lodge Rooms	
Lodges 3-6	\$50 single/\$80 double (GOVT)
	\$60 single/\$90 double (COMM)
VIP Lodge Rooms	\$80 single/\$110 double
Holden Classroom	\$220 per day
Holden Facility Grounds	\$3,300 per day
Holden Cabins	\$33 per day
Applied Technology Labs	\$110 per day
	\$3-825 per day depending on service
Video Production Services	
Walker Firearms Range	\$550 per day

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1375 (F)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 12:116 (February 1986), amended LR 26:95 (January 2000), LR 26:2626 (November 2000), LR 33:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Allison Fitzgerald, Attorney, Louisiana State Police, at 7979 Independence Boulevard, Suite 307G, Baton Rouge, LA 70806. Comments will be accepted through close of business September 10, 2007.

Jill P. Boudreaux
Acting Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: User Fees for Louisiana State Police Facility

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Louisiana State Police (LSP) proposes to set user fees for new training facilities and to increase previously published user fees for existing facilities. State agencies, local governments, and nongovernment users who utilize the facilities will be charged fees that are approximately 10 percent higher than those previously published. Total costs cannot be estimated at this time as the amount will be dependant on the amount of use. As the LSP Training Academy and the Joint Emergency Services Training Center are ancillary budget units, the collection of additional fees will not have a net positive or negative impact as all fees collected provide for said ancillary functions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of these changes will result in increased collections of user fees. A specific amount cannot be provided as the amount of use by outside government and non-government users will determine the resulting total. As matters of reference, the LSP collected \$2,060,868.58 in user fees for FY 05-06 and \$2,891,889.08 for FY 06/07. If usage of the facilities remains at previous levels an estimated average additional \$247,638 in collected user fees could be expected, all self-generated, and all of which goes toward satisfying the ancillary budgets of the respective facilities.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

An increase of approximately 10 percent in user fees can be expected with implementation of these changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition and employment will be minimal. While local privately-owned conference centers are available, LSP anticipated more new users and existing users than users who would have otherwise sought a local privately-owned facility. Law enforcement training facilities are generally used by law enforcement agencies who would not be able to perform the training offered at privately-owned facilities.

Jill P. Boudreaux
Acting Undersecretary
0708#044

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Tax Preparers—Electronic Filing Requirement (LAC 61:III.1501)

Under the authority of R.S. 47:1511 and 47:1520 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1501 to provide for the requirement for tax preparers to file certain individual income tax returns electronically.

Act 452 of the 2006 Regular Session of the Legislature amended R.S. 47:1520(A) to authorize the secretary to require certain tax preparers to file returns electronically under certain circumstances and to require that the electronic filing requirements be implemented by administrative rule in accordance with the Administrative Procedure Act.

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous Chapter 15. Electronic Filing and Payments

§1501. Requirement for Tax Preparers to File Income Tax Returns Electronically

A. Definitions

Authorized Individual Income Tax Return—any individual tax return that can be filed electronically.

Filed Electronically—filing a tax return by electronic means using software that has been approved for electronic filing by the Louisiana Department of Revenue.

Individual Income Tax Return—any tax return required to be filed by R.S. 47:101.

Tax Preparer—a person or entity that prepares for compensation or employs one or more persons to prepare for compensation any Louisiana individual income tax return.

a. A tax preparer is an entity that is assigned a Tax Identification Number and includes all of the entity's locations.

b. The combined total of the returns prepared at all of the tax preparer's locations will be used to determine whether or not the tax preparer is subject to the electronic filing mandate.

B. Individual income tax returns prepared by a tax preparer that prepares more than 100 Louisiana individual income tax returns during any calendar year are required to be filed electronically as follows.

1. For returns due on or after January 1, 2008, 30 percent of the authorized individual income tax returns must be filed electronically.

2. For returns due on or after January 1, 2010, 60 percent of the authorized individual income tax returns must be filed electronically.

3. For returns due on or after January 1, 2012, 90 percent of the authorized individual income tax returns must be filed electronically.

C. A tax preparer that is subject to the electronic filing mandate must be accepted in the IRS e-file Program and have an electronic filer identification number (EFIN) and use software that has been approved for e-file by the Louisiana Department of Revenue.

D. Once a tax preparer is subject to the electronic filing mandate, the tax preparer must continue to e-file the required percentage of authorized individual income tax returns in future years regardless of the number of returns filed.

E. The secretary may waive the electronic filing requirement if it is determined that complying with the requirement would cause an undue hardship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 33:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our Legislative oversight committees. Implementation of this proposed Rule will have no effect on:

1. the stability of the family.
2. the authority and rights of parents regarding the education and supervision of their children.
3. the functioning of the family.
4. family earnings and family budget.
5. the behavior and personal responsibility of children.
6. the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Leonore Heavey, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, September 25, 2007. A public hearing will be held on Wednesday, September 26, 2007, at 10 a.m. in the River Room Conference Room on the Seventh Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Tax Preparers Electronic Filing Requirement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed rule will require individual income tax returns prepared by a tax preparer that prepares more than 100 Louisiana individual income tax returns during any calendar year to be filed electronically. The electronic filing systems and processes will allow the reallocation of some resources and staff time to other tax process

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed rule, which will require individual income tax returns prepared by a tax preparer that prepares more than 100 Louisiana individual income tax returns during any calendar year to be filed electronically, will have no impact on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Tax preparers who prepare more than 100 Louisiana individual income tax returns during any calendar year will be required to file a percentage of their returns electronically. Electronic filing is usually less costly for tax preparers than paper filing and most preparers do not charge the tax payer for this service. The costs to tax preparers and taxpayers should be negligible.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not effect competition or employment.

Cynthia Bridges
Secretary
0708#071

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

**TANF—Jobs for America's Graduates Louisiana
(JAGS-LA) Program (LAC 67:III.5591)**

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III:5591 Jobs for America's Graduates Louisiana (JAGS-LA) Program as a new TANF Initiative.

Pursuant to House Bill 1 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the JAGS-LA Program to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically, and to assist students in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

This Rule was effected July 1, 2007, by a Declaration of Emergency published in the July 2007 issue of the *Louisiana Register*.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

**Subpart 15. Temporary Assistance to Needy Families
(TANF) Initiatives**

Chapter 55. TANF Initiatives

§5591. Jobs for America's Graduates Louisiana (JAGS-LA) Program

A. Effective July 1, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education for the Jobs for America's Graduates Louisiana (JAGS-LA) Program.

B. These services meet the TANF goal to prevent and reduce the incidence of out of wedlock births by providing intervention and improved life prospects for students who show evidence of failing, dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, imprisonment, etc.

C. Eligibility for services is not limited to needy families, however, eligible participants in the JAGS-LA Program shall be 15-21 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; House Bill 1, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The purpose of this program is to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically and to assist the student in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? An effect on the authority and rights of persons regarding the education and supervision of their children is not foreseen at this time.

3. What effect will this have on the functioning of the family? As a result of students participating in the JAGS-LA Program, a positive effect should occur due to earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

4. What effect will this have on family earnings and family budget? An effect on the family earnings and family budget could increase due to earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

5. What effect will this have on the behavior and personal responsibility of children? An effect on the behavior and personal responsibility of children is not foreseen at this time.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through September 27, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on Thursday, September 27, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ann Silverberg Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: TANF—Jobs for America's Graduates
Louisiana (JAGS-LA) Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule will allow the Department of Social Services (DSS) to implement the Jobs for America Graduates (JAGS-LA) Program. The purpose of this Program is to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically and to assist the student in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

DSS will enter into Memorandum of Understanding with the Department of Education to provide services for the program. The program proposes to provide conferences, counseling, and advisory committees to the youth that will offer leadership and direction to further their education. Participants must be 15-21 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers. The implementation costs for the JAGS-LA Program are estimated to be \$500,000 for FY 07/08. The cost of publishing the rule is approximately \$160. The total cost for FY 07/08 is \$500,160. The total cost is 100 percent federally funded with monies from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant with the exception of \$80, which will be funded with State General Fund. The cost for FY 08/09 and 09/10 is \$500,000. Funding will have to be appropriated in these fiscal years to continue the program.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of this rule will have no effect on state or local revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The JAGS-LA Program has a long-term goal of improving the economic situations of the targeted families via educational opportunities available through the program.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0708#080

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System**

Contributions by Electronic Funds Transfer
or Certified Check (LAC 58:I.111)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to adopt LAC 58:I.111, which would allow LASERS to require that agencies remit employee and employer contributions by electronic funds transfer (EFT) or by certified check. It is being proposed to help ensure that

LASERS remain actuarially sound and safeguard prompt payments to members. The proposed Rule complies with and is enabled by R.S. 11:515. No preamble for these proposed Rules has been prepared.

**Title 58
RETIREMENT**

**Part I. Louisiana State Employees' Retirement System
Chapter 1. General Provisions**

**§111. Contributions by Electronic Funds Transfer or
Certified Check**

A. Under circumstances as determined by the executive director, LASERS may require agencies to submit employee and employer contributions by electronic funds transfer ("EFT") or certified check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 33:

Family Impact Statement

This proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., September 28, 2007, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Contributions by Electronic Funds
Transfer or Certified Check**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule change.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

No calculable effect on costs or benefits to non-governmental groups or persons is anticipated to result from the amendment of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou
Executive Director
0708#075

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System**

Spousal Consent (LAC 58:I.2901)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to amend LAC 58:I.2901, which would allow members to obtain spousal consent to their selection of retirement options and DROP beneficiaries at any time prior to retirement. The proposed Rule amendment complies with and is enabled by R.S. 11:446, R.S. 11:477 and R.S. 11:515. No preamble for this proposed Rule amendment has been prepared.

**Title 58
RETIREMENT**

**Part I. Louisiana State Employees' Retirement System
Chapter 29. Spousal Consent**

§2901. Spousal Consent to Retirement Option

A. If a member is married and wishes to elect to retire under either the maximum plan, Option I, or else choose from Options II, III or IV(B) while naming someone other than his spouse as his beneficiary, he must obtain the consent of his spouse in writing on a form provided by LASERS executed before a notary public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:446, R.S. 11:477 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:

Family Impact Statement

This proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., September 28, 2007, to Steve Stark, Board of Trustees for the Louisiana State

Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Spousal Consent**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Married persons who, together with their spouse, share a community property regime are affected. There should be no effect on costs or benefits to these persons resulting from the amendment of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou
Executive Director
0708#076

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Public Oyster Seed Grounds (LAC 76:VII.517)

The Wildlife and Fisheries Commission does hereby give notice of its intent to designate additional Lake Mechant Public Oyster Seed Grounds in Terrebonne Parish to be added to the Lake Mechant Public Oyster Seed Ground as described in LAC 76:VII.517. Authority to establish this addition to the Lake Mechant Public Oyster Seed Ground is vested in the Wildlife and Fisheries Commission by R.S. 56:6(12) and R.S. 56:434(A).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 5. Oyster

§517. Public Oyster Seed Grounds—Portions of Lake Mechant, Lake Tambour, Lake Chien, Lake Felicity, Deep Lake, and Baratavia Bay

A. The following areas are designated as oyster seed grounds:

- 1.a. Lake Mechant, Terrebonne Parish: The state waterbottoms within the following corners.

29° 19' 45.36273" N	90° 58' 19.84034" W
29° 18' 52.50955" N	90° 57' 32.90680" W
29° 18' 41.04086" N	90° 55' 58.95532" W
29° 16' 47.29750" N	90° 56' 44.37133" W
29° 18' 33.55333" N	90° 57' 37.82946" W
29° 18' 46.69380" N	90° 59' 21.09926" W

b. Additional portions of the Lake Mechant Public Oyster Seed Grounds are described as follows.

i. Addition 1: Beginning at a point on the border of the existing Lake Mechant Public Oyster Seed Grounds at latitude 29 degrees 18 minutes 33.5533 seconds N and longitude 90 degrees 57 minutes 37.8295 seconds W; thence southerly to a point at latitude 29 degrees 18 minutes 14.8543 seconds N and longitude 90 degrees 57 minutes 39.1397 seconds W; thence southerly to a point at latitude 29 degrees 18 minutes 03.4928 seconds N and longitude 90 degrees 57 minutes 38.8965 seconds W; then southerly to a point at latitude 29 degrees 17 minutes 42.1030 seconds N and longitude 90 degrees 57 minutes 28.7632 seconds W; thence southwesterly to a point at latitude 29 degrees 17 minutes 36.2469 seconds N and longitude 90 degrees 57 minutes 35.9244 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 29.3388 seconds N and longitude 90 degrees 57 minutes 30.9068 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 18.0878 seconds N and longitude 90 degrees 57 minutes 26.2988 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 12.1229 seconds N and longitude 90 degrees 57 minutes 22.7942 seconds W; thence southeasterly to a point at latitude 29 degrees 17 minutes 04.4969 seconds N and longitude 90 degrees 56 minutes 57.2000 seconds W; thence southeasterly to a point at latitude 29 degrees 17 minutes 01.3854 seconds N and longitude 90 degrees 56 minutes 51.4572 seconds W; thence northwesterly along the existing Lake Mechant Public Oyster Seed Grounds border to the point of beginning.

ii. Addition 2: Beginning at a point on the border of the existing Lake Mechant Public Oyster Seed Grounds at latitude 29 degrees 18 minutes 41.0409 seconds N and longitude 90 degrees 55 minutes 58.9553 seconds W; thence southerly to a point at latitude 29 degrees 18 minutes 30.9866 seconds N and longitude 90 degrees 56 minutes 01.3860 seconds W; thence southeasterly to a point at latitude 29 degrees 18 minutes 15.9476 seconds N and longitude 90 degrees 55 minutes 53.2347 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 59.3179 seconds N and longitude 90 degrees 56 minutes 07.0156 seconds W; thence southerly to a point at latitude 29 degrees 17 minutes 21.1676 seconds N and longitude 90 degrees 56 minutes 21.2961 seconds W; thence southerly to a point at latitude 29 degrees 16 minutes 47.2975 seconds N and longitude 90 degrees 56 minutes 44.3713 seconds W; thence northerly along the border of the existing Lake Mechant Public Oyster Seed Grounds to the point of beginning.

2. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(12) and R.S. 56:434(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 27:214 (February 2001), repromulgated LR 27:431 (March 2001), amended LR 33:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out in R.S. 49:972(B).

Interested persons may submit written comments relative to the proposed Rule until 4:30 p.m., Thursday, October 4, 2007 to Patrick D. Banks, LDWF Marine Fisheries Division, Box 98000, Baton Rouge, LA 70898-9000.

Patrick C. Morrow
Vice-Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Public Oyster Seed Grounds

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No implementation costs or savings to state or local governmental units are anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governmental units are anticipated to experience a slight positive impact from additional oyster tag sales and taxes collected on purchases of supplies and oysters harvested. The amount of the impact is expected to be small due to the small size of the area being added to the Lake Mechant Public Oyster Seed Grounds.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Oyster harvesters, dealers and input suppliers who operate in the Lake Mechant area will benefit from the increase in public oyster seed grounds, since oyster resources located outside public oyster seed grounds and lease areas are unavailable for harvest. The impact to oyster harvesters and businesses cannot be estimated at this time and will depend on the number of oysters harvested from the additional Lake Mechant Public Oyster Seed Grounds. The magnitude of the impact is expected to be small due to the small size of the area being added.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment in the public and private sectors are not anticipated to be impacted.

Janice A. Lansing
Undersecretary
0708#057

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 3-4, 2007, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates: August 31, 2007
 Re-Take Candidates: September 21, 2007
 Reciprocity Candidates: November 9, 2007

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to August 31, 2007. Questions may be directed to (225) 952-8100.

Bob Odom
 Commissioner

0708#046

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given October 22-26, 2007, at 9:30 a.m. in the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is September 7, 2007. No applications will be accepted after September 7, 2007.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 17, 2007. Questions may be directed to (225) 952-8100.

Bob Odom
 Commissioner

0708#047

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Supplement to the 2007 Quarantine Listing for Lethal Yellowing and Texas Phoenix Decline

In accordance with LAC 7:XV.107 and 109, we are hereby publishing a "Supplement to the 2007 Quarantine Listing for Lethal Yellowing and Texas Phoenix Decline" approved by the Commissioner of the Department of Agriculture and Forestry on July 13, 2007.

Based on recent scientific evidence, the state of Texas is being removed from the listing of regulated areas for the Lethal Yellowing quarantine and is being added as a regulated area to a new quarantine pest listing, Texas Phoenix Decline. This action reduces the number of regulated articles originating from the state of Texas.

- 5.0 Lethal Yellowing
 - The state of Florida.
- 12.0 Texas Phoenix Decline
 - The state of Texas

Bob Odom
 Commissioner

0708#048

POTPOURRI

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Structural Pest Control Commission

Approved Termiticides and Manufacturers

The Louisiana Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, is hereby giving notice of the list of termiticides and manufacturers, approved by the Structural Pest Control Commission, for use in Louisiana.

Product	Percentage	Manufacturer
Baseline (Bifenthrin)	0.06% - 0.12%	FMC
Bifen XTS (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifen IT (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifen PT (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifenthrin Pro Multi-Insecticide (Bifenthrin)	0.06% - 0.12%	BASF
Bifenthrin TC (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifenthrin Termiticide / Insecticide (Bifenthrin)	0.06% - 0.12%	Speckoz
Biflex TC (Bifenthrin)	0.06% 0.12%	FMC
Cyper TC (Cypermethrin)	0.25% - 1.00%	Control Solutions

Product	Percentage	Manufacturer
Cypermethrin G-Pro (Cypermethrin)	0.25% - 1.0%	GRO-PRO
Demon (Cypermethrin)	0.25% - 1.00%	Zeneca
Demon MAX (Cypermethrin)	0.25% - 1.00%	Syngenta
Dominion 2L (Imidacloprid)	0.05% - 0.10%	Control Solutions
Dominion 75 WSP (Imidacloprid)	0.05% - 0.10%	Control Solutions
Dragnet FT (Permethrin)	0.50% - 2.00%	FMC
Dragnet SFR (Permethrin)	0.50% - 2.00%	FMC
Imida E Pro 2F (Imidacloprid)	0.05% - 0.10%	Entigra
Imida E Pro 75 WSP (Imidacloprid)	0.05% - 0.10%	Entigra
Impasse Termite System (Lambda-cyhalothrin)		Syngenta
Impasse Termite Blocker (Lambda-cyhalothrin)		Syngenta
MasterLine (Bifenthrin)	0.06% - 0.12%	Univar
Maxxthor SC (Bifenthrin)	0.06% - 0.12%	Ensystem
Permasteer 380 (Permethrin)	0.50% - 2.00%	LG Chemical
Permethrin SFR (Permethrin)	0.50% - 2.00%	Control Solutions
Permethrin TC (Permethrin)	0.50% - 2.00%	Micro-Flo
Phantom (Chlorfenapyr)	0.063% - 0.25%	BASF
Prelude (Torpedo)(Permethrin)	0.50% - 2.00%	Zeneca
Premise 75 (Imidacloprid)	0.05% - 0.10%	Bayer
Premise .05SC (Imidacloprid)	0.05% - 0.10%	Bayer
Premise II (Imidacloprid)	0.05% - 0.10%	Bayer
Premise Pre-construction (Imidacloprid)	0.05% - 0.10%	Bayer
**Premise Gel (Imidacloprid)	0.001%	Bayer
Prevail (Cypermethrin)	0.25% - 1.00%	FMC
Prevail TC (Cypermethrin)	0.30% - 0.60%	FMC
Prevail FT (Cypermethrin)	0.25% - 1.00%	FMC
Prevail Pretreat (Cypermethrin)	0.25% - 1.00%	FMC
Pro-Build TC (Cypermethrin)	0.25% - 1.0%	Syngenta
Prothor WP (Imidacloprid)	0.05% - 0.10%	Ensystem III
Prothor WSP (Imidacloprid)	0.05% - 0.10%	Ensystem III
Talstar P (Bifenthrin)	0.06% - 0.12%	FMC
Talstar Pretreat (Bifenthrin)	0.06% - 0.12%	FMC
Talstar (Bifenthrin)	0.06% - 0.12%	FMC
Talstar One Multi – Insecticide (Bifenthrin)	0.06% - 0.12%	FMC
Tengard SFR (Permethrin)	0.50% - 2.00%	United Phosphorus
Termidor (Fipronil)	0.06% - 0.125%	BASF
Termidor 80WG (Fipronil)	0.06% - 0.125%	BASF
Termidor SC (Fipronil)	0.06% - 0.125%	BASF
ValueLine Bifenthrin TC (Bifenthrin)	0.06% - 0.12%	FMC
Wisdom TC Flowable (Bifenthrin)	0.06% - 0.12%	AMVAC
** Premise Gel is approved for targeted (spot) application only.		

BAITS (Not in Pilot Program)	
Advance Compressed Termite Bait (Diflubenzuron)	Whitmire Micro-Gen
Advance Compressed Termite Bait II (Diflubenzuron)	Whitmire Micro-Gen
FirstLine GTX Termite Bait Station (Sulflurimid)	FMC
FirstLine GT Termite Bait Station (Sulflurimid)	FMC
FirstLine Termite Bait Station (Sulflurimid)	FMC
FirstLine GT Plus (Sulflurimid)	FMC
Labyrinth (Diflubenzuron)	Ensystem
Labyrinth AC (Diflubenzuron)	Ensystem
Recruit II (Hexaflumuron)	Dow Agro Sciences
Recruit II AG (Hexaflumuron)	Dow Agro Sciences
Recruit III (Noviflumuron)	Dow Agro Sciences
Recruit III AG (Noviflumuron)	Dow Agro Sciences
Recruit IV (Noviflumuron)	Dow Agro Sciences
Recruit IV AG (Noviflumuron)	Dow Agro Sciences
Shatter (Hexaflumuron)	Dow Agro Sciences
T-Max (Noviflumuron)	Dow Agro Sciences/Terminix International

BAITS (Not in Pilot Program)	
T-Max AG (Noviflumuron)	Dow Agro Sciences/Terminix International
T-Max II (Diflubenzuron)	Whitmire Micro-Gen/Terminix International

Bob Odom
Commissioner

0708#019

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Notice of Public Hearing

Revised Substantive Changes to Proposed Rule AQ256, Comprehensive Toxic Air Pollutant Emission Control Program (LAC 33:III.211, 223, 551, 5101, 5103, 5105, 5107, 5109, 5111, and 5112) (AQ256S1)

Under the authority of the Louisiana 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 revised substantive changes to the proposed amendments to the Air Quality regulations, LAC 33:III.211, 223, 551, 5101, 5103, 5105, 5107, 5109, 5111, and 5112 (Log # AQ256S1), which were originally noticed as AQ256 in the December 20, 2006, issue of the *Louisiana Register* and re-noticed with substantive changes as AQ256S1 in the May 20, 2007, issue of the *Louisiana Register*.

The department is proposing revised substantive changes to address comments received during the public comment period for the substantive changes to the proposed rule, AQ256S1. LAC 33:III.5105.B.3.c is revised to provide for the continuing exemption of emissions from the combustion of refinery fuel gas and to clarify that the emissions from the combustion of fuel gas systems are also exempt from the provisions of LAC 33:III.Chapter 51. Also, the discharge reporting requirements in LAC 33:III.5107.B that were deleted in the original proposed rule, AQ256, are reinstated in the regulations.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from substantively changed language is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

A public hearing on the revised substantive changes will be held on September 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the revised substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

Written comments regarding the revised substantive changes must be received no later than October 3, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302,

Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by email to judith.schuerman@la.gov. Persons commenting should reference AQ256S1 in their correspondence. Copies of this proposed regulation with revised 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.

This regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§211. Methodology

A. Formula to Apportion Fees

Air Toxics Permits Application Fee for major sources of toxic pollutants (based on type of facility and on rated production capacity/throughput)	Surcharge of 10% of the permit application fee to be charged when there is an increase in toxic air pollutant emissions above the Minimum Emission Rates (MER) listed in LAC 33:III.5112, Table 51.1
Air Toxics Annual Emissions Fee for major sources of toxic air pollutants (based on air toxic pollutants emitted) ¹	Variable
Annual Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Variable
New Application Fee (based on type of facility and on rated production capacity/throughput)	Variable
Major and Minor Modification Modified Permit Fee (based on type of facility and on rated production capacity/throughput)	Variable
PSD Application Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 50% of the application fee when a PSD permit application is being processed
"NESHAP" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the Annual Maintenance Fee for that particular process/plant to be added to the Annual Maintenance Fee
"NSPS" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the permit application fee to be charged for any permit application that includes the addition of new equipment subject to NSPS regulation
¹ Fees shall be assessed on major sources as defined in LAC 33:III.5103. Sources that have reduced emissions below major source thresholds are not required to submit annual emissions reports in accordance with LAC 33:III.5107.	

B. - B.13.e. ...

14. Air Toxics Annual Emissions Fees based on actual annual emissions that occurred during the previous calendar year shall be assessed on *major sources* as defined in LAC 33:III.5103.

15. - 15.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:

§223. Fee Schedule Listing

Table 1. - Table 2, Note 12. ...

Note 13. Fees will be determined by aggregating and rounding (e.g., parts of a ton less than 0.50 are invoiced as zero and parts of a ton equal to or greater than 0.50 are invoiced as one ton) actual annual emissions of each class of toxic air pollutants (as delineated in the tables in LAC 33:III.5112) for a facility and applying the appropriate fee schedule for that class. If a facility emits more than 4000 tons per year of any single toxic air pollutant, fees shall be assessed on only the first 4000 tons. In no case shall the fee for this category be less than \$132.

Note 14. - Note 20. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 2341, and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496, 1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000), repromulgated LR 27:192 (February 2001), amended LR 29:672 (May 2003), LR 29:2042 (October 2003), LR 30:1475 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 5. Permit Procedures

§551. Hazardous Air Pollutant (HAP) Control Technology Requirements for New Sources

A. - B. Similar Source. ...

C. Exemptions and Prohibitions. The requirements of this Section do not apply to:

1. *electric utility steam generating units* as defined in LAC 33:III.5103.A;
2. stationary sources that are within a source category that has been deleted from the source category list in accordance with Section 112(c)(9) of the Clean Air Act; and
3. *research and development activities*, as defined in Subsection B of this Section.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:913 (May 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5101. Applicability

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any *major source*, as defined in LAC 33:III.5103, unless exempted under LAC 33:III.5105.B.

B. The provisions of LAC 33:III.905, 5105.A.1, 3, and 4, and 5113 apply to the owner or operator of any stationary source that was a major source upon promulgation of this Subchapter (as of December 20, 1991), but that has achieved minor source status through reduction of emissions and reduction of potential to emit.

C. The provisions of this Subchapter do not apply to the consumer use, in a duration and frequency intended by the manufacturer, of products obtained through retail commerce, or to activities conducted on residential property. The provisions of this Subchapter do not apply to the distribution or application of pesticides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:56 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§5103. Definitions, Units, and Abbreviations

A. The terms in this Subchapter are used as defined in LAC 33:III.111 except for those terms defined herein as follows.

* * *

Potential to Emit—the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of the design if the limitation or the effect it would have on emissions is specified by an existing state permit or a permit issued under a program to prevent the significant deterioration of air quality.

* * *

Source Category—a classification of sources identified by EPA pursuant to Section 112(c) of the Federal Clean Air Act.

* * *

Virgin Fossil Fuel—any solid, refined solid, refined liquid, or refined or natural gaseous fossil fuel with a Btu content greater than 7,000 Btu/lb that is not blended with reprocessed or recycled fuels. Group 1 *virgin fossil fuels* consist of natural gas, liquid petroleum gas, distillate fuel oil, gasoline, and diesel fuel. Group 2 *virgin fossil fuels* consist of coal, residual fuel oil, and petroleum coke.

* * *

B. - B.4, std. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:57 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§5105. Prohibited Activities and Special Provisions

A. - A.1. ...

2. After December 20, 1991, no owner or operator of any major source shall cause a violation of any ambient air standard listed in LAC 33:III.5112, Table 51.2, unless operating in accordance with LAC 33:III.5109.B.

A.3. - B.1. ...

2. Electric utility steam-generating units are exempt from the requirements of this Subchapter.

3. Each of the following emissions are exempt from the requirements of this Subchapter:

a. emissions from the combustion of Group 1 virgin fossil fuels;

b. emissions from the combustion of Group 2 virgin fossil fuels vented from a stack that has downwash minimization stack height or a height approved by the department; and

c. emissions from the combustion of gas streams with a Btu value of greater than 7,000 Btu/lb, that are generated by onsite operations, collected by a *fuel gas system* as defined in 40 CFR Part 63, Subpart G, and used as fuel.

4. Any source, as defined in accordance with rules promulgated by the United States Environmental Protection Agency under provisions in Section 112(i)(5) of the federal Clean Air Act, that is in compliance with an enforceable commitment approved by the administrative authority* to achieve early reductions of 90 percent or more (95 percent for particulates), or that has demonstrated early reductions of 90 percent or more (95 percent for particulates), in accordance with such rules, shall be exempt from MACT requirements under LAC 33:III.5109.A. The term of exemption shall extend until such time as the compliance extension granted by the administrative authority or the U.S. Environmental Protection Agency has expired, or until nine years from the anticipated date of promulgation of applicable federal MACT standards according to the schedule published by the U.S. Environmental Protection Agency in accordance with Section 112(e)(3) of the federal Clean Air Act, whichever date is earlier. Under no circumstances shall this provision be used to grant an exemption to a source under conditions that do not result in a net air quality benefit for the state of Louisiana, as determined by the administrative authority. Under no circumstances shall the granting of such an exemption to a source relieve any source of other obligations under state or federal law.

5. In accordance with R.S. 30:2060, except under circumstances that may reasonably be expected to pose a threat to human health, whether or not such units are in a contiguous area or under common control, in determining the applicability of emission standards or technical control standards the administrative authority shall not aggregate:

a. emissions from any oil or gas exploration or production well and its associated equipment;

b. emissions from any pipeline compressor or pump station; or

c. emissions from other similar units.

6. The emissions from the remediation of a RCRA, CERCLA, or any nonregulated inactive or abandoned waste site cleanup shall be exempt from the ambient air standards of LAC 33:III.5112, Table 51.2, upon approval of the cleanup plan by the administrative authority.

7. Emissions from the combustion of wood residue fuel from pulp and paper mills are exempt from the provisions of LAC 33:III.5109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:2104 (December 1991), amended LR 18:1362 (December 1992), LR 21:370 (April 1995), LR 23:58 (January 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions

A. Annual Emissions Reporting. The owner or operator of any major source that meets the applicability requirements in LAC 33:III.5101.A and emits any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 51.3, shall submit a completed annual emissions report to the Office of Environmental Assessment, Air Quality Assessment Division, in a format specified by the department. The owner or operator shall identify on the emissions report the quantity of emissions in the previous calendar year for any such toxic air pollutant emitted.

1. Beginning with the report due in 2008, the annual emissions report shall meet the following requirements.

a. The owner or operator of any major source subject to the requirements in this Subsection shall submit a completed annual emissions report to the Office of Environmental Assessment on or before March 31 of each year, unless otherwise directed by the administrative authority, that shall identify the quantity of emissions of all toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, for the previous calendar year.

b. Annual emissions reports and revisions to any emissions report shall include a certification statement that attests that the information contained in the emissions report is true, accurate, and complete, and that is signed by a *responsible official*, as defined in LAC 33:III.502. The certification statement shall include the full name of the responsible official, his or her title and signature, the date of the signature, and the phone number of the responsible official. The certification statement shall read:

"I certify, under penalty of perjury, that the emissions data provided is accurate to the best of my knowledge, information, and belief, and I understand that submitting false or misleading information will expose me to prosecution under state regulations."

2. Any facility required to submit a report pursuant to this Subsection shall also report in accordance with LAC 33:III.919.

B. Discharge Reporting Requirements

1. Emergency Conditions. For any discharge of a toxic air pollutant into the atmosphere that results or threatens to result in an emergency condition (a condition which could reasonably be expected to endanger the health and safety of the public, cause significant adverse impact to the land,

water or air environment, or cause severe damage to property), the owner or operator of the source shall immediately, but in no case later than one hour, notify the Department of Public Safety 24-hour Louisiana Emergency Hazardous Materials Hotline at (225) 925-6595 (collect calls accepted 24 hours a day).

2. Emission Control Bypasses. Except as provided in Paragraph B.6 of this Section, for any unauthorized discharge into the atmosphere of a toxic air pollutant as a result of bypassing an emission control device, when the emission control bypass was not the result of an upset, and the quantity of the unauthorized bypass is greater than or equal to the lower of the Minimum Emission Rate (MER) in LAC 33:III.5112, Table 51.1, or a reportable quantity (RQ) in LAC 33:I.3931, or the quantity of the unauthorized bypass is greater than one pound and there is no MER or RQ for the substance in question, the owner or operator of the source shall provide prompt notification to the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC), of the bypass no later than 24 hours after the beginning of the bypass in the manner provided in LAC 33:I.3923. Where the emission control bypass was the result of an upset, the owner or operator shall comply with Paragraph B.3 of this Section.

3. Nonemergency Conditions. Except as provided in Paragraph B.6 of this Section, for any unauthorized discharge of a toxic air pollutant into the atmosphere that does not cause an emergency condition, the rate or quantity of which is in excess of that allowed by permit, compliance schedule, or variance, or for upset events that exceed the reportable quantity in LAC 33:I.3931, the owner or operator of the source shall immediately, but in no case later than 24 hours, provide prompt notification to the Office of Environmental Compliance, Emergency and Radiological Services Division, SPOC, in the manner provided in LAC 33:I.3923.

4. Written Reports. For every such discharge or equipment bypass as referred to in Paragraphs B.1, 2, and 3 of this Section, the owner or operator shall submit to the Office of Environmental Compliance, Emergency and Radiological Services Division, SPOC, a written report by certified mail within seven calendar days of learning of the discharge.

a. The report shall contain the following information:

- i. the identity of the source;
- ii. the date and time of the discharge;
- iii. the cause of the discharge;
- iv. the approximate total loss during the discharge;
- v. the method used for determining the loss;
- vi. any action taken to prevent the discharge;
- vii. the action taken to minimize the discharge; and
- viii. the measures adopted to prevent future discharges.

b. If written notification of the discharge or bypass is required to be submitted pursuant to LAC 33:I.3925, such notification shall fulfill the obligation to submit a written report under this Paragraph.

5. All discharges to the atmosphere of a toxic air pollutant from a safety relief device, a line or vessel rupture, a sudden equipment failure, or a bypass of an emission control device, regardless of quantity, must be reported to

the department in the annual emissions report and where otherwise specified in the applicable subchapters. The report shall include the following information:

- a. the identity of the source;
- b. the date and time of the discharge; and
- c. the approximate total loss during the discharge.

6. Leaks detected pursuant to specific leak detection and elimination requirements of any Subchapter of this Chapter shall be recorded and/or reported as required in that Subchapter and shall not be subject to Paragraphs B.2, 3, and 4 of this Section.

C. ...

D. Public Notice Provisions. The administrative authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing before granting approval for construction or issuing any permit that would:

1. allow a permitted increase in any Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate; or

2. allow the addition of any new point source or emission unit that would emit a Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and 2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2004 (September 2000), LR 26:2460 (November 2000), LR 29:2778 (December 2003), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:

§5109. Emission Control and Reduction Requirements and Standards

A. Maximum Achievable Control Technology (MACT) Requirements

1. The owner or operator of any major source that emits or is permitted to emit a Class I or Class II toxic air pollutant at a rate equal to or greater than the minimum emission rate listed for that pollutant in LAC 33:III.5112, Table 51.1, shall control emissions of that toxic air pollutant to a degree that constitutes Maximum Achievable Control Technology (MACT) as approved by the administrative authority.

2. Compliance with an applicable federal standard promulgated by the US EPA in 40 CFR Part 63 shall constitute compliance with this Subsection for emissions of toxic air pollutants.

3. MACT determination for sources not regulated by a federal MACT standard shall be determined by the administrative authority through the permitting process using the existing state MACT determination method or protocol.

B. Ambient Air Standard Requirements. The owner or operator of any major source that emits, or is permitted to emit, any toxic air pollutant at a rate equal to or greater than the minimum emission rate listed for that toxic air pollutant

shall determine the status of compliance, beyond the source's property line, with applicable ambient air standards listed in LAC 33:III.5112, Table 51.2. (See LAC 33:III.5105.A.2.)

1. New major sources shall demonstrate compliance with an ambient air standard in an application for a permit in accordance with LAC 33:III.5111.

2. The owner or operator shall achieve compliance with the ambient air standard unless the owner or operator demonstrates to the satisfaction of the administrative authority:

a. that compliance with an ambient air standard would be economically infeasible;

b. that the source's emissions could not reasonably be expected to pose a threat to public health or the environment; and

c. that the source's emissions would be controlled to a level that is Maximum Achievable Control Technology.

3. The administrative authority shall publish a public notice of and hold a public hearing on any preliminary determination to allow a source to exceed the ambient air standard for any toxic air pollutant listed in LAC 33:III.5112, Table 51.2. Within 90 days after the close of the public hearing on the preliminary determination, the administrative authority shall make a final determination, which is subject to review on a five-year basis or at any other time deemed appropriate by the administrative authority.

4. The administrative authority shall periodically, at least every 36 months, review and update the ambient air standards listed for each toxic air pollutant in LAC 33:III.5112, Table 51.2.

C. Standard Operating Procedure Requirements

1. The requirements of this Subsection do not apply to emissions of any of those pollutants listed in LAC 33:III.5112, Table 51.3, or to sources complying with applicable federal standards in 40 CFR Part 63.

2. The owner or operator of any new or existing source required to report emissions in accordance with LAC 33:III.5107.A shall develop a standard operating procedure (SOP) within 120 days after achieving or demonstrating compliance with the standards specified in this Chapter. The SOP shall detail all operating procedures or parameters established by the owner or operator to ensure that compliance with the applicable standards is maintained, and shall address, but not be limited to, operating procedures for any monitoring system in place, specifying procedures to ensure compliance with LAC 33:III.5113.C.5. A written copy of the SOP must be available on site or at an alternate approved location for inspection by the administrative authority. A copy of the SOP must be provided within 30 days upon request by the department.

D. Compliance Timing

1. The department may take appropriate enforcement action to address the failure by an existing major source to submit a Compliance Plan or Certification of Compliance, which submittal was required by Paragraph A.1 or 2, and Paragraph B.1 or 2, of this Section as promulgated in the *Louisiana Register* on December 20, 1991, at LR 17:1204, until <INSERT DATE OF PROMULGATION OF THIS RULE>.

2. A new source shall be in compliance with the MACT regulations upon initial start-up of the source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993), LR 23:59 (January 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§5111. Permit Requirements, Application, and Review

A. Major Source Permit Requirements. Before commencement of the construction of any new source or any modification that will result in an increase in emissions of any toxic air pollutant or will create a new point source that emits a toxic air pollutant, the owner or operator of such source shall obtain a Louisiana air permit in accordance with LAC 33:III.501 and Subsection B of this Section and in accordance with LAC 33:I.1701.

B. Contents of Application for a Louisiana Air Permit

1. - 2.b. ...

c. technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of intended controls and monitoring procedures. Such technical information shall include estimation of emissions prior to and after installation of emission control equipment or adoption of control measures, calculations of emission estimates in sufficient detail to allow assessment of the validity of the calculations, and documentation of methods or sources of information used in these determinations. Emissions of toxic air pollutants shall be speciated to identify each toxic air pollutant emitted from each emission point at the source and to identify fugitive emissions of toxic air pollutants.

3. Each application for a permit to modify an existing major source facility shall include, in addition to the information required in Paragraph B.2 of this Section, the following information:

a. - b. ...

c. calculations of estimates of emissions before and after the changes are completed, in sufficient detail to allow assessment of the validity of the calculations;

d. for sources that have been operating in Louisiana for a period of at least five years, a listing of all violations of Louisiana air quality laws or regulations for which the owner or operator is responsible, including all violations for which a compliance schedule has been established and which have been cited in administrative enforcement actions by the

department, and for which all rights of review and appeal have been exhausted. Applicants under a compliance schedule shall also demonstrate that they have made satisfactory progress in meeting the conditions of the compliance schedule. Applicants shall also provide a listing of all administrative or judicial actions taken against the owner or operator within the last five years under Louisiana environmental laws or regulations, including emergency cease and desist orders, notices of violation, compliance orders, penalty notices, or other administrative orders and any administrative or judicial proceedings that could result in such actions, and any other compliance history information requested by the administrative authority;

e. for sources that have not been operating in Louisiana for at least five years, a listing of all enforcement actions taken against the owner or operator for violations of United States federal or state environmental laws or regulations, and any other compliance history information requested by the administrative authority.

4. Any application corresponding to a major source that emits or is permitted to emit any Class I or Class II toxic air pollutant shall include a description of all federal standards (i.e., any standards promulgated by the US EPA in 40 CFR Part 63) and compliance methods applicable to units being permitted.

5. The department may request a dispersion modeling report demonstrating compliance with the ambient air standard developed by the owner or operator in accordance with the department's air toxics modeling procedures.

6. The owner or operator shall provide such other pertinent information as may be necessary for a complete understanding of the application that is being reviewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993), repromulgated LR 19:1314 (October 1993), amended LR 23:59 (January 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2461 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:

§5112. Tables—51.1, 51.2, 51.3

Table 51.1, Class I. – Class II. ...

Table 51.1 Minimum Emission Rates Toxic Air Pollutants Class III. Acute and Chronic (Non-Carcinogenic) Toxins			
Compound	CAS Number	Synonyms	Minimum Emission Rate (Pounds/year)
* * *			
[See Prior Text in Acrylic acid - Hydrochloric acid]			
Hydrofluoric acid	7664-39-3	Fluoric acid, Hydrogen fluoride	63.0
Hydrogen cyanide	74-90-8	Cyclon	800.0
Hydrogen sulfide	7783-06-4		1,000.0
* * *			
[See Prior Text in Maleic anhydride - Zinc (and compounds) [1][12]]			

Explanatory Notes:
[1]. – [12]. ...

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compound	CAS Number	Class	Ambient Air Standard [14]	
			(µg/m ³ *) (8 Hour Avg.)	(µg/m ³ **) (Annual Avg.)
Acetaldehyde	75-07-0	II		45.50
Acetonitrile	75-05-8	II	810.00	
Acrolein	107-02-8	II	5.40	
* * *				
[See Prior Text in Acrylamide - Antimony (and compounds) [1]]				
Arsenic (and compounds) [1] [13]	7440-38-2	I		0.02
Asbestos (friable)	1332-21-4	I		†
Barium (and compounds) [1]	7440-39-3	II	11.90	
Benzene	71-43-2	I		12.00
Beryllium (and compounds) [1]	7440-41-7	I		0.04
Biphenyl	92-52-4	II	23.80	
Bis (2-chloroethyl) ether	111-44-4	I		0.30
1,3-Butadiene	106-99-0	II		0.92
n-Butyl alcohol	71-36-3	III	3,620.00	
Cadmium (and compounds) [1]	7440-43-9	I		0.06
Carbon disulfide	75-15-0	II	71.40	
Carbon tetrachloride	56-23-5	II		6.67
Carbonyl sulfide	463-58-1	III	582.00	
Chlorinated dibenzo-p-dioxins [2]	3268-87-9	II		.003
Chlorinated dibenzo furans [3]	51207-31-9	II		.003
Chlorine	7782-50-5	III	35.7	
Chlorine dioxide	10049-04-4	II	6.67	
Chlorobenzene	108-90-7	II	1,100.00	
Chloroethane	75-00-3	II	6,290.00	
Chloroform	67-66-3	II		4.30
Chloromethane	74-87-3	II		55.56
Chloroprene	126-99-8	II	857.00	
Chromium VI (and compounds) [1] [13]	7440-47-3	I		0.01
Copper (and compounds) [1]	7440-50-8	II	23.80	
Cresol [4]	1319-77-3	III	238.00	
Cumene	98-82-8	III	5,860.00	
Diaminotoluene	25376-45-8	II	181.00	
1,2-Dibromoethane	106-93-4	I		0.45
Dibutyl phthalate	84-74-2	II	119.00	
1,4-Dichlorobenzene	106-46-7	II	1,430.00	
1,2-Dichloroethane	107-06-2	II		3.85
Dichloromethane	75-09-2	II		212.77
1,2-Dichloropropane	78-87-5	II	8,260.00	
1,3-Dichloropropylene	542-75-6	II	107.00	
2,4-Dinitrotoluene [5]	121-14-2	II	4.76	
2,6-Dinitrotoluene [5]	606-20-2	II	4.76	
1,4-Dioxane	123-91-1	II	2,140.00	
Epichlorohydrin	106-89-8	I		83.00
Ethyl acrylate	140-88-5	II	476.00	
Ethyl benzene	100-41-4	II	10,300.00	
Ethylene glycol	107-21-1	III	2,380.00	
Ethylene oxide	75-21-8	I		1.00
* * *				
[See Prior Text in Formaldehyde - Hydrochloric acid]				
Hydrofluoric acid	7664-39-3	III	61.90	
Hydrogen cyanide	74-90-8	III	260.00	
Hydrogen sulfide	7783-06-4	III	330.00	
Maleic anhydride	108-31-6	III	23.80	
Manganese (and compounds) [1]	7439-96-5	II	4.76	
Mercury (and compounds) [1]	7439-97-6	II	1.19	
* * *				
[See Prior Text in Methanol - Xylene (mixed isomers) [9]]				
Zinc (and compounds) [1] [10] [13]	7440-66-6	III	119.00	

Explanatory Notes:

* - [11]. ...

[12] Includes the following compounds: Naphthalene (CAS Number 91-20-3), Methyl-naphthalene (CAS Number 1321-94-4), 1-Methyl-naphthalene (CAS Number 90-12-0), 2-Methyl-naphthalene (CAS Number 91-57-6).

[13] Zinc chromates and zinc arsenates are Class I TAPs regulated as carcinogens under Chromium VI (and compounds) and arsenic (and compounds) TAP categories.

[14] The AAS for acetaldehyde, acetonitrile, biphenyl, carbon disulfide, chloroethane, cresol, 1,4-dichlorobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, ethylene glycol, manganese (and compounds) was revised effective January 1, 2002.

Table 51.3 – Explanatory Note [4]. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1331 (December 1995), amended LR 22:278 (April 1996), LR 24:1277 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1237 (July 1999), LR 26:2004 (September 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

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POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Notice of Public Hearing

Substantive Changes to Proposed Rule OS078, Notification Requirements and Reportable Quantity List (LAC 33:I.3905, 3919, 3925, and 3931) (OS078S)

Under the authority of the Louisiana 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 substantive changes to the proposed amendments to the Office of the Secretary regulations, LAC 33:I.3905, 3919, 3925, and 3931 (OS078S), which were originally noticed as OS078 in the May 20, 2007, issue of the *Louisiana Register*.

The department is proposing substantive changes to address comments received during the public comment period for proposed rule OS078. The proposed rule moved the unauthorized discharge reporting requirements in LAC 33:III.5107.B to LAC 33:I.Chapter 39, in an effort to streamline reporting requirements and remove duplicative reporting language from the regulations. In order to complete this streamlining process, some toxic air pollutant (TAP) reportable quantities (RQs) were added to the table at LAC 33:I.3931, and some TAP RQs in the table were lowered. However, in response to comments, this action is being reversed, and RQs for the toxic air pollutants that were added in proposed rule OS078 have been removed. The RQs for these pollutants revert back to the federal RQs, where applicable. Other minor changes are made to clarify the regulations.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from substantively changed language is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

A public hearing on the substantive changes will be held on September 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

Written comments regarding the substantive changes must be received no later than October 3, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by email to judith.schuerman@la.gov. Persons commenting should reference OS078S in their correspondence. Copies of this proposed regulation with 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.

This regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter A. General

§3905. Definitions

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Groundwater—water located beneath the ground surface or below a surface water body in a saturated zone or stratum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), amended by the Office of Secretary, Legal Affairs Division, LR 33:

Subchapter C. Requirements for Prompt Notification

§3919. Notification Requirements for Unauthorized Discharges with Groundwater Contamination Impact

A. In the event that any unauthorized discharge results in the contamination of the groundwaters of the state or otherwise moves in, into, within, or on any saturated subsurface strata, the discharger shall notify the Office of Environmental Compliance, Emergency and Radiological Services Division, SPOC, within seven days.

B. Dischargers shall submit written notification in accordance with LAC 33:I.3925 or any permit or license terms and conditions issued under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2076(D), 2183(I), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and

amended LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:

Subchapter D. Notification Procedures

§3925. Written Notification Procedures

A. - A.2. ...

3. For information required by Subsection B of this Section that is not available at the time of submittal of the written notification report due to an ongoing investigation, updates of the status of the ongoing investigation of the unauthorized discharge shall be submitted every 60 days until the investigation has been completed and the results of the investigation have been submitted.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. - A.2. ...

B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants. If a pollutant is listed with more than one reportable quantity, the lower-value reportable quantity shall be used.

Pollutant	Synonym	CAS No. ¹	RCRA ² Waste Number	Pounds
Acetaldehyde	Acetic aldehyde	75070	U001	700
Allyl chloride	3-Chloropropene	107051		1000/10 ⁶
Aniline	Aminobenzene	62533	U012	5000/1000 ⁶
Antimony*		7440360		5000/100 ⁶
Antimony compounds		20008		100
Barium*		7440393		100
Barium compounds		20020		100
n-Butyl alcohol	1-Butanol	71363	U031	5000/1000 ⁶
Carbonic dichloride	Phosgene	75445	P095	10/1 ⁶
Chlorinated dibenzo furans, all isomers				1
Chlorine dioxide	Chlorine oxide	10049044		1
Chromium ³ *		7440473		5000/100 ⁶
Chromium compounds		20064		100
Copper ³		7440508		5000/100 ⁶
Copper compounds		20086		100
Cumene	Isopropyl benzene	98828	U055	5000/1000 ⁶
Ethyl acrylate	2-Propenoic acid, ethyl ester	140885	U113	1000/10 ⁶
Ethylene	Ethene	74851		5000 [†] or 100 [†]
Glycol ethers **				100
Hexane	Hexyl hydride	110543		5000/1000 ⁶
Hydrogen chloride	Hydrochloric acid	7647010		5000/1000 ⁶
Hydrogen fluoride	Hydrofluoric acid	7664393	U134	100/10 ⁶
Manganese*	Colloidal manganese	7439965		100
Manganese compounds				100
Methyl acrylate	2-Propenoic acid methyl ester	96333		10
Methyl ethyl ketone (MEK)	2-Butanone	78933	U159	5000/1000 ⁶
Methyl isobutyl ketone	4-Methyl-2-pentanone	108101	U161	5000/1000 ⁶
Methylmercaptan	Methanethiol	74931	U153	100/25 ⁶
Methyl methacrylate	2-Methylacrylic acid methyl ester	80626	U162	1000/100 ⁶
Methylene diphenyl diisocyanate	Methylene bisphenyl isocyanate	101688		1000
Nitric acid	Hydrogen nitrate	7697372		1000/100 ⁶
Oil				1 barrel
Phthalic anhydride	1,3-Isobenzofurandione	85449	U190	5000/1000 ⁶
Polynuclear aromatic hydrocarbons ***				1
Produced water				1 barrel
Propionaldehyde	Propionic aldehyde	123386		1000/100 ⁶
Propylene	Propene	115071		100 [†]
Sulfur dioxide				500
Sweet pipeline gas (Methane/Ethane)				42000 (1,000,000 scf)
Vinyl acetate	Vinyl acetate monomer	108054		5000/100 ⁶
Volatile organic compounds not otherwise listed ⁴				5000
Only those highly reactive volatile organic compounds listed below: ethylene and propylene ⁵				100 [†]

Pollutant	Synonym	CAS No. ¹	RCRA ² Waste Number	Pounds
F003 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:			F003	100
Methyl isobutyl ketone		108101		5000/1000 [@]
n-Butyl alcohol		71363		5000/1000 [@]
F005 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:			F005	100
Methyl ethyl ketone		78933	U159	5000/1000 [@]

* No reporting of releases into the ambient air of this metal is required if the diameter of the pieces of solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

** This reportable quantity is applicable to the aggregate emissions of the following glycol ethers: ethylene glycol monomethyl ether (CAS Number 109864), ethylene glycol monomethyl ether acetate (CAS Number 110496), ethylene glycol monoethyl ether (CAS Number 110805), ethylene glycol monoethyl ether acetate (CAS Number 111159), diethylene glycol dimethyl ether (CAS Number 111966), and ethylene glycol dimethyl ether (CAS Number 110714). All other glycol ethers are subject to the federal RQ, if applicable, that is incorporated by reference in LAC 33:1.3931.A.

*** The emissions of all Polynuclear Aromatic Hydrocarbons (PAHs), excluding any PAHs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded.

¹ Chemical Abstracts Service Registry Number.

² Resource Conservation and Recovery Act of 1976, as amended.

³ Prompt notification of releases of massive forms of these substances is not required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers (0.004 inches).

⁴ The emissions of all volatile organic compounds (VOCs), excluding any VOCs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded. VOC is defined in LAC 33:III.111, and exempt compounds are listed in LAC 33:III.2117.

⁵ The emissions of these highly reactive VOCs shall be totaled to determine if an RQ has been exceeded.

[@] The first RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into or onto all media within any consecutive 24-hour period. The second RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere.

[†] The RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere for facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

[#] RQ for the state except the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:603 (April 2006), LR 32:2248 (December 2006), LR 33:640 (April 2007), LR 33:

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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
The Anschutz Corporation	Wildcat	L	Joseph F Meyer Est	1	159802
Great Southern Oil & Gas Co Inc	Jennings North	L	Vermillion Irrigation Company	1	72467 (30)
Lutz Oil & Gas, L.L.C.	Potash	L	Orleans Levee Board B	1	149528
Lutz Oil & Gas, L.L.C.	Potash	L	Vua; Orleans Levee Board B	2	151555
Lutz Oil & Gas, L.L.C.	Potash	L	Vub; Orleans Levee Board B	3	151593
Lutz Oil & Gas, L.L.C.	Potash	L	Vub; Orleans Levee Board B	1-D	151754
Everett Phillips	Monroe	M	Parish School Board	1	154229
Seahawk Oil & Gas, Co.	Jefferson Island	L	Sd 2 Re Sua;J B McDonald	1	192971
Seahawk Oil & Gas, Co.	Leleux	L	Mt 3 Rh Sua; L C Landry	1	218651
Seahawk Oil & Gas, Co.	Leleux	L	Mt 3a Rb Sua; L C Landry	2	221502
Seahawk Oil & Gas, Co.	Leleux	L	Louis Curmet Landry et al Swd	1	972814

James H. Welsh
Commissioner of Conservation

0708#097

POTPOURRI

**Department of Natural Resources
Office of the Secretary**

Fishermen's Gear Compensation Fund

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 9 claims in the amount of \$38,438.41 were received for payment during the period July 1, 2007-July 31, 2007.

There were 7 claims paid and 2 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2901.481	8914.189	Plaquemines
2917.047	8957.292	Jefferson
2917.689	8954.202	Jefferson
2918.401	8959.087	Jefferson
2951.278	9321.003	Cameron
2959.258	8909.055	St. Bernard
3010.717	8945.167	St. Tammany

A list of claimants and amounts paid can be obtained from Marjorie McClinton, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Scott A. Angelle
Secretary

0708#073

POTPOURRI

**Department of Revenue
Policy Services Division**

Severance Taxes on Oil and Gas (LAC 61:I.2903)

The Notice of Intent which proposes to amend LAC 61:I.2903, relative to the severance tax on oil, condensate or similar natural resources, natural gas liquids, and gas was published in the April 2007 issue of the *Louisiana Register*. A public hearing was scheduled for Wednesday, May 30, 2007, at 1 p.m. A Potpourri Notice was published in the May 2007 issue of the *Louisiana Register* that rescheduled the hearing for Thursday, August 23, 2007, at 10 a.m. in the Calcasieu Room on the second floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

The public hearing scheduled for Thursday, August 23, 2007, at 10 a.m. regarding the Department of Revenue's proposed amendments to LAC 61:I.2903 is cancelled. The department is not going forward with the amendments to the Rule at this time.

Cynthia Bridges
Secretary

0708#072

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